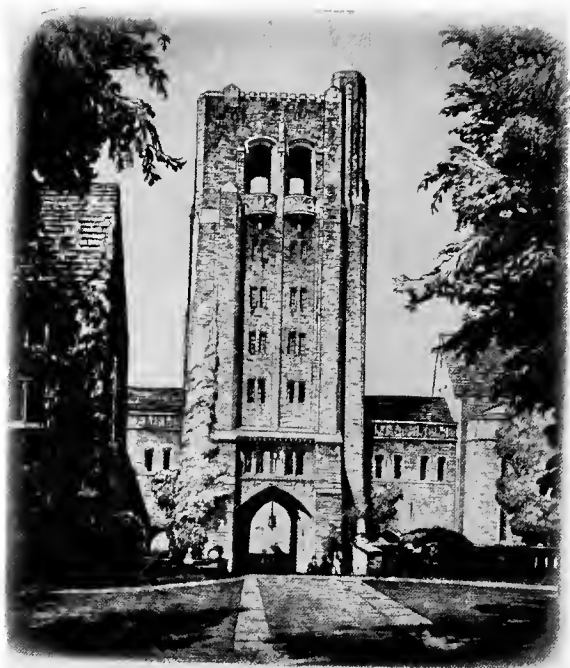




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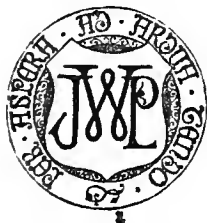
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SELECTIONS
FROM THE
CHARGES AND OTHER DETACHED PAPERS
OF
BARON ALDERSON.

WITH AN INTRODUCTORY NOTICE OF HIS LIFE,

BY
CHARLES ALDERSON, M.A.
FELLOW OF ALL SOULS, OXFORD.



LONDON:
JOHN W. PARKER AND SON, WEST STRAND.

1858.

[*The Author reserves the right of Translation.*]

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INTRODUCTORY NOTICE

OF THE

LIFE OF BARON ALDERSON.

EDWARD HALL ALDERSON was the eldest son of Mr. Robert Alderson, who for many years held the combined offices of Recorder of Norwich, Yarmouth, and Ipswich.

Although he was himself a native of East Anglia, and during the latter portion of his life, in consequence of his official duties, resided in the city of Norwich, Mr. Robert Alderson was descended from a family long settled at Ravenstondale, in the north of England, upon the borders of Yorkshire and Westmoreland. He had somewhat late in life, at the suggestion of a relative, chosen the Bar as a profession, and coming to London, engaged chambers in the Inner Temple for the study of the law, and ultimately its practice. After a career of some years in the metropolis, attended with a fair amount of success, he retired into his native county, which he found a more congenial sphere of action. Though never attaining eminence as a barrister, his views on law were sound and sensible; and this, added to his high character, agreeable social qualities, and practical ability, served to recommend him, in course of time, to the three corporations, who in succession nominated him to the post of their principal law officer. The duties of these offices he discharged with

great efficiency, till the infirmities of old age and disease rendered him incapable of continuing to perform them, and necessitated their resignation; but not before he had been permitted to anticipate confidently a still more honourable connexion of his name with the profession than had already resulted from his own services; and, indeed, to receive in his house at St. Helens, if not in his official capacity, his eldest son as Judge of Assize on the Norfolk Circuit.

Edward Hall, his eldest son, was born at his grandfather's house at Yarmouth, on Sept. 11th, 1787. He was at an early age deprived of a mother's care; Mrs. Alderson dying of consumption after the birth of two younger children, in the year 1791. The premature loss of that maternal superintendence which exercises so salutary an influence upon childhood was ever the subject of his life-long regret. It breathes in the following passage in a letter written many years later to a near relative, whose infant children had, by the death of their mother, been left in circumstances somewhat resembling his own. 'I feel for your children more than they can, poor babes, feel for themselves as yet. They are, as I was, without a mother's care at an early period of life, and I know how much of advantage they lose, and of the purest pleasure.'

On his mother's death he passed with his brother and sister under the care of their grandfather, Mr. Hurry, whose house at Yarmouth, in the absence of their father in London, became their permanent home. That which was in one point of view an irreparable loss, may have been in another beneficial. He may have owed, in some part at least, to the comparative isolation of his boyhood, the early acquired habits of observation and independent thought. Not that, while residing with his grandfather,

his education, in the ordinary sense of the term, met with any neglect. He was, in the first instance, sent to a day-school in the adjoining parish of Gorleston, then kept by a Mr. Wright, from whom he received his first instruction in the elements of Latin; and here he continued regularly to attend, until through the kindness of a friend of his grandfather this arrangement was, in the course of time, superseded by another. This gentleman, perceiving the genuine desire to learn which the boy displayed, not only consented to give him private instruction, but also by good-naturedly promoting, out of school hours, any study which he appeared specially to affect, greatly stimulated his literary and scientific tastes. The very absence at this period of a more fixed and undeviating course of study would seem to have operated advantageously. Not only was his appetite for general knowledge whetted by the encouragement thus freely afforded, but also, as the director to a certain extent of his own studies, he was led to invent for himself, as it were, a set of mental rules, which were of invaluable service to him in after life. Foremost among these was that of a clear and systematic arrangement in his mind of all that he learnt; a secret to which in after life he would often attribute his academic success, and constantly urge on all who would seek to turn mere bookwork to real account.

It will suffice to mention briefly the several stages of his school career. Before the close of the century, having reached an age when a more regular course of mental training was thought desirable, he was placed by his grandfather at a school at Scarning, near Dereham, in Norfolk, kept at that time by Mr. St. John Priest, and memorable as having been the educational cradle of Lord Chancellor Thurlow; as was remembered with pride when young Alderson was enrolled among the scholars. He

did not remain here very long. In 1800 the relative, to whose affectionate solicitude he already owed so much, died. That he retained to the end a deep interest in the future prospect of his daughter's children was shown remarkably by the tenor of his will, in which were entered special instructions that his grandchildren should receive the best possible education. To meet wishes so emphatically expressed, his son-in-law determined on removing his eldest son from Scarning, and sending him to one of the greater Foundations. The Charterhouse was selected, presided over at that period by Dr. Matthew Raine; and the first year of the opening century saw Edward, now a boy of thirteen, transferred from 'the garden of Norfolk,' as the numerous orchards round Dereham have caused its neighbourhood to be named, and consigned to the smoke and fog of the metropolis. It is a little remarkable that a climate which pre-eminently agreed with his constitution in after life, affected it in the first instance injuriously. His health began, after some little time, so sensibly to fail, that his father, alarmed lest he should fall a victim to the disease which had already been fatal to several of his family, determined on removing him from London; and it was ultimately arranged that he should be sent, on his complete recovery, to the Grammar School at Bury St. Edmund's, at the head of which at that time was Mr. Beecher, and which had the reputation of being ably conducted. Hither accordingly he proceeded, and met for the first time among his schoolfellows several with whom he was destined afterwards to compete, both on the arena of the University, and the Bar. Among others was one—deservedly eminent in a different walk of life from his own—whom the same year has seen gathered to his last resting-place—the late Bishop Blomfield; the friendship with whom, engendered

in school and college days, was maintained during the course of years devoted to the discharge of their respective public duties.

Such was the outward course of his school career: it would be a subject of more interest to notice how each successive stage served to develop further the powers of an understanding at once vigorous and acute. Doubtless at Bury, as at Scarning, much of scholarship and science was added to his growing stores; which, by means of a naturally powerful and accurate memory, he was enabled, to a remarkable degree, to retain and arrange. That faculty was early strengthened and improved by artificial means; and by nothing more than by the two rules laid down in the following extract, in which, in after life, he is only recommending to another what he had long practised himself:—

What we wish to remember we should attend to, so as to understand it perfectly, fixing our attention specially on its most important and distinctive features. We should disengage our minds for the moment from other things, that we may attend effectually to that which is before us. No man will read with much advantage who cannot empty his mind at pleasure of other subjects, and does not bring to the author he reads an intellect neither troubled with care, nor agitated with pleasure. If the mind be filled with other matters, how can it receive new ideas? It is a good practice to improve the memory, and far better than making notes or transcribing passages at *the time*, to read carefully, and after the lapse of some days to write an abstract of what has been read. And this will give us the habit of storing up for future use our immediate acquisitions in knowledge. Again, memory is assisted by an orderly arrangement of the thoughts. It is obvious that in recollecting a speech or discourse *that* is most easily recalled in which the argument proceeds from one step to another by regular induction. So we ought to conduct our studies—otherwise our knowledge being in confusion, our memory will be defective.

But by far the most characteristic feature of his mind was the habit of picking up information at all times and on all points, the most varied and dissimilar. The 'observing faculty' was never asleep, being constantly exercised upon all that came in his way deserving of notice; and if knowledge of some kind or other was to be acquired, the opportunity was never lost. From his boyhood, the habits of an animal, the structure of a plant, was in his eyes full of interest; and thus early in life, from his personal observation, no less than from books, of which he was an indefatigable reader, he began to amass the fund of general information which distinguished him as a man, and which embraced, to some extent, an infinity of subjects.

The holidays were spent at St. Helens, in Norwich. During such seasons of leisure, despite his classical predilections, Edward entered with keenness into the pursuits which are deemed the more natural objects of a schoolboy's ambition. He was fond of riding—even indulging now and then in a day with the hounds. In another physical accomplishment, too, he excelled, being an expert jumper. Of the value of all such manly recreations, in due subordination to more important matters, he retained through life a strong opinion, considering them to constitute a most useful element in the training which school-life affords. Thus, in after life, when himself the father of boys at school, he addresses one of them :—

I have sent you to Eton that you may be taught your duties as an English young gentleman. The first duty of such a person is to be a good and religious Christian, the next is to be a good scholar, and the third is to be accomplished in all manly exercises and games, such as rowing, swimming, jumping, cricket, and the like. Most boys I fear begin at the wrong end, and take the last first; and what is still worse, never arrive at either of

the other two at all. I hope, however, better things of you : and to hear first that you are a good, truthful, honest boy, and then that you are one of the hardest workers in your class, and after that, I confess I shall be by no means sorry to hear that you can show the idle boys that an industrious one can be a good cricketer, and jump as wide a ditch, or clear as high a hedge as any of them.

But literature of all sorts, and the composition of verses in English or Latin, remained after all the chief amusement of his leisure hours. At one time a drama was begun on the subject of the 'Siege of Calais,' and a whole act of blank verse accomplished. Or some chance circumstance furnished him with a topic for an epigram, of which he hastened to avail himself. Upon one occasion, an old willow-tree in his father's garden, on the banks of the river Wensum, was blown down, and its fall and conversion into a garden seat commemorated in the following lines :—

Arbor eram ; sedem Boreas fecere Notusque ;
 Defessis requiem nunc, peregrine, fero.
 Sed neque divulsas frondes fractumve cacumen
 Jam queror ; his moriens utilis esse queo.
 Quin, tibi Vensumi quisquis petis advena ripam,
 Decutiet nigras mors inimica comas ;
 Vive tuis patriæque, mei memor, ut tibi possit
 Æternum vitæ finis habere decus.*

** Translation of Latin lines.*

I who afford the weary rest,
 Once raised to heaven my feathering crest,
 A tree—till envious winds o'erthrew,
 And gave me form and posture new.

What tho' my leaves be dry and dead,
 Shattered the boughs that graced my head,
 If still 'tis given me here t' achieve
 Some useful purpose, wherefore grieve ?

The summer of 1804 saw the end of his school career. An arrangement had been made by his father to send him as a private pupil, before going up to the University, to Mr. Maltby's, the late Bishop of Durham. Accordingly, after the holidays, he proceeded to Buckden, in Huntingdonshire, where Mr. Maltby then resided; and where, with a few other select pupils, he was to have the advantage of his eminent assistance in his classical studies. Here he remained fifteen months assiduously devoting himself to his books. 'During this time,' says the Bishop, writing after an interval of many years, 'he conducted himself so uniformly well as to make it a pleasure for me to have him for an inmate. Respecting application to his studies, I have often remarked that I never saw any one so eager for information, and so ready to profit by it, in whatever shape it was supplied. To this feature of his character, which, so far as my experience goes, he possessed in a degree superior to what I have ever observed, I attribute in a great measure the success which attended him in every stage of his subsequent life.' How great was the benefit of Mr. Maltby's tutorial ministrations, may be gathered from the significant fact that among this contemporary batch of pupils may be found a Senior and Second

Translation of Latin lines continued.

Rest, traveller, rest—nor scorn in me
A salutary truth to see—
Injurious death must rob thy brow
Of each dark tress that crowns it now.

So live, intent on others' weal,
That though thy bloom the tyrant steal,
Thy friends and country still may find
Some lasting good yet left behind.

Wrangler, two Chancellor's Medallists, and two Smith's Prizemen.*

The fifteen months thus quickly passed away in diligent preparation for exertions on a more extended scale, and amidst the competition of Cambridge; whither, in the October of 1805, Alderson proceeded to take possession of his rooms at Caius College, of which he had been enrolled a member.

Originally his name had been entered at Trinity, but his father had been subsequently induced, by the representations of a relative of his own, engaged in work as tutor of Caius, to transfer his son, of whose career at the University the highest expectations were entertained by all to whom he was known, to the roll of the adjoining college, where, with a few others similarly transferred, he accordingly commenced keeping Terms. The favourable anticipations of a relative might be open to the suspicion of partiality; they appear, however, to have been entertained to an unusual degree by all who had any acquaintance with his intellectual powers. Although thus coming up to college with what experience often proves to be 'the perilous inheritance' of a school-acquired reputation, and fully conscious that his career was the centre of many anxious hopes, he was neither made nervous nor oppressed, as many a young man is, by the knowledge of what is expected of him by his family and friends. On the contrary, there was apparent from the first in him a firm, but modest determination to be content with nothing less than the highest honours. 'If any one had offered me, when going up to college, the place of *second* wrangler, I would have at once refused.' Such in after life was his description of the tone of his mind at the outset of his

* In the persons of Messrs. Brandreth, Standly, and Alderson.

academical career; and, without doubt, in that resolve lay the secret of his subsequent success.

His life at college was regular and studious, and yet in some respects characteristic. Despite of college requirements, he could never bring himself to a regular attendance at morning chapel, being by habit a late riser. In another particular he displayed a remarkable self-denial. Although a frequent host and guest, he laid down a rule, which he rigidly observed whilst at Cambridge during the three years of his undergraduate life, to abstain from wine: fearing lest its effect, even taken in moderation, might be injurious to evening work. In other respects, study was too natural a taste to entail much effort. A rule which he laid down for himself at the outset, of reading a certain number of hours each day, not only rendered any excess of application, as the time of examination approached, unnecessary, but was also found to allow a sufficient margin for fully participating in the social enjoyments of college life. Under any circumstances, the rapidity and ease with which he worked, and the intellectual vigour with which he grappled with each difficult subject, would have gone far to make his career at college not only successful, but to be reckoned as amongst the most agreeable periods of his life.

The second year of his residence was signalized by his obtaining his first University honour, Sir Thomas Browne's Medal, for the best Greek and Latin epigrams. In the following letter the ceremony of 'keeping an act' in the schools—an excellent exercitation for a youthful debater—is described:—

I have at present kept an Act, or in other words, defended against the objections of three opponents, three mathematical and metaphysical subjects, which were the seventh section of Newton's Principia—the Phenomenon of the Aberration of the Fixed Stars—and Locke on the Degrees of Knowledge. I believe I overthrew most of the objections, and got a very good

'Honour' (as it is called) from the Moderator. Tu domine respondens omni tuo officio satis et præstanter functus es. I likewise, a day ago, was first opponent or objector against another man, and got a very good honour. Omnia tua argumenta præstanter intellexisti et defendisti.

The vacations, as his holidays had been, were spent at St. Helens. Not that he availed himself to the full extent of the leave of absence which Alma Mater proffers, being usually to be found at Caius in the summer up to the end of July, when the college was definitively closed. And in winter it was his habit not to anticipate by much more than a few days the merry family gathering which met round his father's table at each recurring Christmastide. On such occasions his talents were invoked by general consent for the composition, not of prose or verse, but of a brimming bowl of punch, in the admixture of which he was pronounced to excel.

It was for such seasons, when home was revisited, that a peculiar gratification was reserved for him in the society and intimate friendship of his eldest sister, Isabella. To charms of person she united a quality of mind which one like her brother could not fail to appreciate. Like him, reading was her passion; and in common with him she possessed the faculty of mastering with astonishing ease the pith of what she read. In her judgment, on a variety of subjects, he placed great reliance; and nothing, perhaps, gave him more delight in a temporary return to St. Helens, than the return to a personal interchange of thoughts and ideas with a sister so admired and so beloved. Such a gratification, however, was not to last long. The hand of the fatal malady which had destroyed her mother was already upon her, and month by month strengthened its deadly hold, until in 1807 she finally drooped and died. What the loss of her companionship was to her brother,

and how keenly he felt it, immersed as he was at the time in study at college, may be gathered from the following pathetic allusion in some lines written in the hour of his subsequent triumph, upon the occasion of another sister's marriage :—

E'en 'midst the contests of the classic shade,
When Learning hailed me for her fav'rite son,
I felt a void—for she, alas ! was dead
Whose smile had more than graced the triumph won.
In her consumption's varied sufferings charmed,
Still more endeared by sickness' languid mien,
Now hope alternate cheered, now fear alarmed,
Till Death, slow—sudden, closed the flickering scene.
So have I seen the canker's deadly power
E'en in its pride destroy the lovely rose,
While, sweet in death, the slowly withering flower
Around its stem a parting fragrance throws.

The whole of the summer preceding the Degree Examination was passed at Cambridge, with little to break the monotony of daily work. The cloud which the death of his sister threw over his life was not permitted long to obscure a disposition so constitutionally joyous and hopeful: it passed away by degrees in hearty wholesome sorrow; and in mental occupation which thickened upon him as the winter of 1808 approached, he incidentally found the truest solace, the more so, that even from the untimely death of her who had been his earliest companion and friend, he drew an additional motive for endeavouring to distinguish himself, in the thought of the pleasure his success would have given her if living. 'Do you know,' he says, writing to his only surviving sister, who had succeeded to that close intimacy which he loved to encourage, 'that I have taken into my head what I hope will be a still greater incitement to me to endeavour to distinguish myself—that at any rate, if she will not feel any addition to her

happiness now, yet she would if she were alive have felt it so—and that it is a sort of sacred duty I have to perform.’

And yet at no time was study ever so engrossing as to exclude home persons and objects. Even in the midst of the hardest reading, time is found for revising and criticising verses, which his sister would from time to time amuse herself by transmitting. The following, a little grandiose perhaps in style, serves to show with what warmth of interest and thoughtful anxiety he watched the progress of her education and the development of her intellectual faculties :—

I suppose, my dear B——, you are by this time at Nottingham, and congratulate you most sincerely on your arrival. May I hope you will want no incentive to employ your time there as profitably as possible, that I may be proud to call you my sister. I have on that score no fears. Do not, however, in the pursuit of *accomplishments*, neglect *necessaries* to make yourself an agreeable companion. By accomplishments I would here mean personal accomplishments, as drawing, music, dancing, &c.; by necessities I mean mental improvement, as history, poetry, geography, chronology. As to these latter, perhaps, a slighter knowledge would be sufficient. Heaven send my sister may not be such a milk-and-water character as most women at present are. I would not have you a blue-stockings, nor a mere machine, to make merely your entrance and exit in the drama of life.

I was much pleased with your parody—but give me leave to suggest a third line in the first stanza, as conveying a more natural image.

At length the time of examination arrived, and the result, announced in January, 1809, did not cause much surprise, however great the satisfaction it created, among the family and friends of the successful competitor. Alderson was declared Senior Wrangler, and immediately after 1st Smith’s Prizeman, an honour which usually, but not always, falls into the wake of the former distinction.

‘Edward,’ writes his brother, from Caius, telling the news of his success, ‘has just completed his Senior Wranglership, if I may so express myself, by gaining the First Smith’s Prize. I understand he beat the others hollow in the examination. Indeed, one of the Moderators came up to him after he was declared Senior Wrangler, and said, ‘Mr. Alderson, I congratulate you; but you must have known where you would be before you began.’

‘To-day he has left Cambridge with Mr. Maltby, with whom he stays a week, and then returns to read for a classical prize.’ -

‘Don’t think to see me before Easter,’ he writes himself a few days later to his sister. ‘It is out of the question, as I shall be better employed in trying to add another feather to my cap by classical acquirements. In this, too, I know I have your good wishes.’

This interval of special preparation for the Classical Examination was turned to good account. He was in due time announced as First Medallist, thus completing, by this last achievement, a list of honours almost unequalled in the annals of the University.* No element entered more largely into the satisfaction which he personally felt at the result of these examinations, than the thought of the gratification it gave his family, and especially his father. ‘I often remember,’ he says, urging on his own son, many years afterwards, the various incentives to study, ‘and that, with the greatest satisfaction, that in this respect God enabled me to give pleasure to my father; and now that I have children of my own, I feel how great that pleasure must have been.’

* The only other degree identically the same was that of Mr. Brundish, of Caius, in the year 1773. The late Bishop of Lincoln, Dr. Kaye, was Senior Wrangler and First Medallist, but missed the *First* Smith’s Prize.

The first result of so brilliant a degree was an immediate election to a Fellowship. It will be conceived that an interval of well-earned repose upon his laurels was thoroughly appreciated. The text-books of graver studies were laid upon the shelf, or replaced by literature of a lighter order—the English poet or humourist, for whose pages he possessed so keen a relish; and between hours so given to leisurely enjoyment, and his daily rides in the neighbourhood of Cambridge, with the excitement now and then of an evening debate in the Union Society, of which he was one of the first founders, this happy breathing time passed swiftly away.

His last appearance in what may be called a public capacity at Cambridge, was on the occasion of the installation of the Duke of Gloucester as Chancellor, when he recited in the Senate House—his father being present, a proud and delighted listener—a Latin Essay on the Comparison of Ancient Dialogues with Modern, to which the Members' Prize for Senior Bachelors, as that for Middle Bachelors in the preceding year, had been adjudged.

In the course of the year 1809 he proceeded to London to commence the profession which he had chosen, by reading law and keeping law terms. The following lines, written on leaving St. Helens for the metropolis, express something of his feelings on leaving home to begin the law:—

As one condemned on unknown seas to sail,
When from the port his little bark he steers,
Gazes awhile—his eyes suffused with tears—
Ere yet he spreads his canvas to the gale,
So do I now forsake with anxious fears,
Home of my forefathers, thy peaceful dale;
For other prospect to my view appears,
Half hid beneath futurity's deep veil.
Me now the busy world's unceasing strife,
The throng of cities and the hum of men,

And all the crowded walks of active life,
Call from thy rustic Muse, and silent glen ;
Oh ! when shall I from cares like these be free,
To dream of pleasure, and revisit thee !

He had been already entered at the Inner Temple, and on arriving took possession of quarters within the precincts of that Society, and began forthwith a daily attendance at the chambers of Mr. Chitty the special pleader. Under such able guidance he devoted himself to the laborious study of the science of special pleading ; while his remarkable powers of reading found material for exercise in plenty in the old Text Books and Law Reports. It was his constant practice, too, to devote a certain portion of time to attendance in the courts themselves, where he took careful and copious notes of the arguments and the proceedings generally. In this routine of daily labour and diligent study of the principles of jurisprudence, the young Templar served his novitiate—not, however, engrossed to an extent which precluded a thorough appreciation of the multifarious recreations which a residence in London placed within his reach.

In 1811 he was called to the bar, and joined for the first time the Northern Circuit and Yorkshire Sessions. Some of his impressions of persons and places may be best gathered from the following letter addressed to his father, towards the conclusion of his first circuit :—

Lancaster, Sept. 10, 1811.

I arrived at this place last Wednesday, and shall leave it at the end of this week. I return to the Lakes, which I passed through on my way hither, and hope to visit Ravenstondale on my passage. I am going to spend a few days at Brougham Castle—the house of the great Mr. Brougham's father. This invitation was unexpected by me, but, as you may suppose, I am not a little gratified that my acquaintance should be sought by

so distinguished a man. I have made several very agreeable acquaintances on the circuit, and particularly that of the gentleman whose frank this is, the eldest son of Lord Auckland, and one of the most agreeable young men I ever saw. I am going to Durham from Mr. Brougham's house, and after staying a few days there, shall go on to Hull to the sessions, and from Hull to Manchester. If you will write to the presiding magistrate at the last place, it will be of some service to me. I find it is there the custom to give a brief to every young barrister, which they call his soup-ticket; so I shall have *some* business. I like our sessions leader, John Williams, very much. What business he is in! and certainly most deservedly. In a few years he must, I think, lead this circuit. Scarlett is the great man here. He has by far the most business; and when, as is expected, he gets a silk gown, he will annoy either Park or Topping a good deal. Allan Park has been very civil to me. He inquired for you, and said he knew you.

On the Lake scenery, which he now saw for the first time, he is more enthusiastic:—

I think [he continues] I never was more delighted than when I first saw Derwentwater, situated so beautifully as it is between Skiddaw at one end and Borrowdale at the other, with the cataract of Lodore in sight. While the lake was bright and calm, Borrowdale and its entrance was overhung with dark black clouds, and it seemed as if it were the entrance to Tartarus. The mountains on the side of the lake are so various in their sizes, shapes, and substances; on the one side the precipitous stony ridge of Castle Crag, on the other the Red Pike, and in front of this a grassy mound of a different shape. On the whole, I am inclined to admire this lake the most. I have not, however, as yet seen Ulswater. On the road to Ambleside we stopped at Wythborn, and ascended Helvellyn. When at the top, the singularity of the comparative lowness of many of what we had called mountains when we were below, was striking. One in particular, a steep stony precipice, called Eagle's Crag, which we had remarked as extremely lofty, now seemed so low that it appeared as if we could have stepped down from the top to the

ground below. What a singular effect ! and so I suppose when one rises in the world, the men, too, whom we think our present Eagle's Crag, we shall, if ever we rise to the top of a political Helvellyn, look down upon in the same way.

At Carlisle briefs were not so plentiful as to prevent a visit to what he informs his sister, writing from Newcastle, is ' not an unfrequent lion for the juniors on the circuit.'

Although you are perhaps not aware of any secret attachment which I nourish, I now tell you that I am just starting to Gretna Green ; with whom is at present a secret. Pray break it as well as you can to my poor father. I was at the ball here on Monday. The rooms are very fine, and were well filled, and with a great number of pretty women, greatly to the credit of Northumberland beauty. Dick Wilson was there, quite in his element, knowing and known of all. He invited me very cordially to come and see him at Bilderstone in October, which I believe I shall do. I shall certainly remain in this part of the country till the middle of October, and shall then come for a few days into Norfolk, on my way to London.

Travelling was so far more serious a matter in 1811 than it is at present, that, once arrived in the regions of the north, he did not think it worth while to turn his steps southwards until after the autumnal sessions; whiling away the month which intervened between the conclusion of the circuit and the beginning of sessions work in visits to friends or relatives resident in that part of the country. After so employing his interval of leisure, in this instance in staying at the homes of some of the agreeable acquaintances to which the circuit had introduced him, he was called away from a succession of very pleasant visits to attend the West Riding Sessions. The following letter, written to his sister from Harrogate, whither, as close to the scene of action, he had repaired, accounts for his doings since the end of circuit.

Harrogate, Oct. 7.

The Sessions being at Knaresborough to-morrow, and Knaresborough being within two miles of this place, I have taken it on my way from Durham, and arrived here the night before last accordingly. Harrogate is only the shadow of what it was a few weeks ago. Only the latter brood of waterers remain. I have not tasted the water yet, but intend myself that pleasure this morning, unless I am prevented by the rain, which threatens so much as to put an end to another intention of mine, viz., of seeing Fountain's Abbey. I shall, I hope, see that celebrated pile some future time, *perhaps with you*; and under that agreeable impression shall cease to lament my present failure. I have been staying since I last wrote to you with Mr. Brougham, at his seat in Westmoreland, where I spent a week in the pleasantest manner possible. The family is extremely amiable, seeming completely to love one another, and looking up to their eldest brother as to a superior man, as indeed he is. There is an excellent library there. Our party for the two last days was increased by another barrister, Mr. Grey, nephew to the member for Newcastle, Mr. Brandling, and a relative, though distant, of Lord Grey's. He is another of the agreeable acquaintances I have formed on the circuit, being an Oxford man, and a Fellow of Oriel.

I think you had the impertinence to ask how I came to be acquainted with Brougham. Answer it yourself, madam; I cannot for modesty's sake. To be serious, however, he sought my acquaintance; as although I was from the first extremely desirous of knowing him, I scorn to court any man whom I consider my superior. Besides, my own observation even on this circuit has taught me that the real way to become acquainted with any one is not to be forward. This was particularly exemplified by one other junior and myself. He, as soon as he got into the mess-room, called everybody by their surnames, and made himself quite free and easy. I pursued my plan—and at the end of the circuit I know everybody, and he nobody.

After spending my week with Brougham, I went on with Grey to do the same at his father's house, near Newcastle. It is a handsome large stone house, the residence of an opulent

country squire. There, too, I was quite at my ease, liking my society, and I hope liked of them—for these are generally convertible terms. I was vastly inclined to have stayed a little longer, but my Durham engagement pressed.

After visiting Manchester, where the ‘soup-ticket’ was duly forthcoming, he proceeded to the south, paying a visit of a few days to Norwich upon the way up to town.

In the May of 1812 the country was plunged into a ministerial crisis by the murder of Mr. Perceval. Of this he is full, when writing in that month to congratulate his sister on her majority, as well as of Bellingham’s execution, which his clerk had been to see.

The day [he writes] on which you came of age will be easily recollected. It was the day between Mr. Perceval’s burial and his murderer’s execution. Bellingham was executed this morning; fortunately without serious disturbance, although Jack Ketch was pelted off the scaffold when he first came to put the rope on the gallows. The rope (singular enough) was then adjusted to the gallows by the clergyman who attended the prisoner, a Catholic priest. After bowing twice to the crowd, Bellingham put the rope on his own neck, fitted it as a man would do a neckcloth, and settled it to his satisfaction. The clergyman adjusted the knot to his left ear. All was over in two or three minutes from his first appearance. There was an unruly disposition in the mob, many expressing wishes that Perceval were hanged instead of the man. In one short week the minister has been assassinated and his assassin executed. What extraordinary times are these! No surmise of ministerial arrangements. There is but one that can satisfy the country, and that I fear would overawe too much Calypso* and her whelp of Yarmouth to be carried into effect.

The return of summer called him northwards again

* Lady Hertford.

from the distractions and business of London life, the prelude to more extended operations, being an attendance at the West Riding July Sessions. In the following letter he informs his sister, who was at this time residing at Keswick, of the probability of his paying her a visit in the course of the summer or autumn.

Temple, Saturday.

You may remember Rochefoucault's maxim—'There is something in the distresses of our best friends,' &c. It is true in my case, for I am very glad to hear of your being settled at Keswick, although sorry for the cause. It is not unlikely that I shall trouble you with a month's visitation, for I shall have that interval between circuit and sessions, and I cannot possibly employ it more pleasantly.

I always thought Derwentwater the most beautiful of the Lakes, with only the exception (and I am not clear as to that) of Ulswater. There can be no more healthy air than that you breathe at Keswick, particularly at this time of year. Exercise I hope you take in proper quantities; not too much at first. You will find hill-climbing very useful—at least I know I did last year.

I hope that the change of ministry, and I trust of measures, will quiet the country. It seems likely that the Orders in Council will be repealed. That, by opening the American market, will give immediate relief to the Lancashire manufactures. I look forward to better things now. Meanwhile I am getting *small, but increasing*, gains in the profession of the law, having in Michaelmas Term made $2\frac{1}{2}$ guineas, in Hilary Term 5 guineas, and in Easter Term 6 guineas. I increase, you see, and hope this Trinity Term to make seven or eight. Rome was not built in a day, and I shall not be Chancellor this year.

Yesterday I dined with the Bishop of Norwich. There was a rout in the evening; and as I knew several people, I found it agreeable. I was introduced to Lady Gosford at her request—I suppose because she knew Mrs. A——. I am going, I believe, to a masquerade at a Mrs. Owen's on Thursday se'nnight. I am not decided as to what character I shall assume.

Trinity Term proved more lucrative than his most sanguine anticipations. Thus he writes, with the exultation of one who has just made the important step from *one* client to a plurality, to his brother-in-law :—

I have hitherto been driving a flourishing trade, having had already nine motions this term. I know of another, and the term is only half over. Viva! Viva! All this is owing to *two* new clients, for I have not had my average from my *one* old one.

But besides these more legitimate first-fruits of his professional career, other occupation was found for his spare hours in the shape of a little experimental legislation :—

I have been employed [he writes, addressing the same relative] by Lord Moira, as drawer of amendments to a bill of Lord Redesdale's. I gave my opinion that the proposed amendments were impracticable, and drew the *Clauses*. I see his lordship has acquiesced, and the bill is thrown out. If Lord M—— brings in a new bill, I am, I believe, to draw it. Have you anything [he adds in sport] to ask of the Premier,—[rumour at the time destining Lord Moira to the post of minister]—any place, or pension, or sinecure?

After a visit to the Skipton and Manchester Sessions, the circuit is joined at York. At the old capital of the north he, in common with the rest of the bar, is entertained by the archbishop, according to hospitable custom, at a grand banquet served in the room, as he informs his sister, in which Wolsey entertained Henry VIII.

I am just returned from Bishopsthorpe, where we have had a very good entertainment from his Grace. I have since been admiring the Minster by moonlight, which—at all times worthy—is then most worthy of admiration. All buildings look best by moonlight. I think it is chiefly owing to the indistinct awe which then pervades them. But there is also the colour, which

adds much. Perhaps a Grecian temple, or something very beautiful in *parts*, would not be then seen to advantage; but our old Gothic cathedrals, the beauties of which consist so much in general outline, but whose parts are not individually so beautiful, are never so well viewed as at that time.

Neither the sessions nor the circuit were, from the first, wholly barren of results. To whatever cause it is to be attributed—whether to the reputation with which his success at Cambridge had stamped him, or to the comparatively small number of barristers of which at that time the Northern Circuit was composed, or in part to both—it is certain that Alderson had not to contend with the prolonged discouragement by which so many distinguished lawyers have been met at the outset of their career, and which forms perhaps the most interesting feature in the perusal of their lives. This point of interest will therefore be searched for in vain in these pages. ‘I have not been without business,’ he says, writing in the winter of 1812-13, ‘having had at the last sessions five briefs, and since my return to town have received two more.’

It would seem, therefore, rather to argue in him an ungrateful mind—his prospects considered—when he is found, a few months later, addressing, in the following terms, an ode to Adversity:—

Written at the Pontefract Sessions by a Vacant Lawyer.

(*Strenua nos exercit inertia.*)

Hail, Goddess of the briefless band,
That near my threshold lov’st to stand,
And with thy withering glance,
Scare off the ‘One, et cætera’s’ all
As if they saw some Taxor tall
With sconcing pen advance.

Why thus, dull goddess, wilt thou shed
 Thy gifts on my devoted head,
 Compelled thus here to stay,
 To hear the chairman's drowsy charge
 Or—state a case *at large*,
 And listen all the day.

* * * * *

Though others say, Adversity,
 Sweet are thy uses, yet for me
 Thy manners are too rude.
 No longer dwell with me I pray,
 I wish thee, goddess, not to stay,
 Nor on my haunts intrude,

But 'stead of thee let Bus'ness come,
 Attended by the ceaseless hum
 Of Motions, Briefs, Appeals:
 How sweet her voice, how fair her mien—
 While in perspective dim are seen,
 King's Counsel and the Seals.

The enviable ease with which he worked, and the power of rapid comprehension by which his intellect was marked, as they were calculated to ensure success in a profession in which much depends on the ready mastery of complicated details, enabled him indirectly to enter into, and enjoy to an extent not always conceded to the competitor for legal distinction, the pleasures of literature and society. Thus he managed, at this period, to escape from the cares of pleading and the study of reports, and indulge in frequent visits to the theatre—to which he was almost passionately addicted—as well as to the evening parties of his acquaintance, where his wit and sprightliness made him a welcome addition. On one occasion, at this period of his life, he presented himself, in company with one of his cousins, at a masqued ball at Almacks, in the disguise of a deaf old gentleman,

playing that character to the old lady of his companion ; and the two acquitted themselves so well, availing themselves with such humour of the privilege of their supposed infirmity, as to be followed on leaving by persons desirous of ascertaining from whom so much fun and so many lively sallies proceeded. Or else he snatched an interval from business to indite an epigram or copy of verses to his no less sprightly cousin and correspondent, Mrs. Opie. With this lady, indeed—then in the full swing of London gaiety under the Regency—a constant interchange of compliment, repartee, and lively correspondence, pleasantly marks the flow of spirits by which these early days at the Bar were animated : and it is amusing to watch it toning down to the mellower gravity befitting the Judge and Quaker of after times. At the time which is at present treated of, anonymous effusions seem not unfrequently to have arrived at Norwich—where Mrs. Opie then resided—with the Yarmouth postmark unaccountably impressed thereupon, and *vice versâ*, a few elegant stanzas would come to light, as though from some obscure Norfolk village, on the breakfast table of the Temple. Or else it is the ‘ Monk of the Temple ’ who writes : and ‘ At least as good a Nun as thou art Monk ’ who responds. In the following, his fair correspondent—at that time an ardent patriot herself—treats him to some very flattering, but questionable, advice :—

What bold aspiring's thine, ambitious youth !
 Could not one crown content thy lofty brow,
 But classic lore, and mathematic truth,
 Must both before thy grasping influence bow ?
 And lo ! another triumph fills thy breast,
 For Themis' smile thou woo'st at Themis' shrine—
 But let not there thy noble daring rest ;
 Let higher meeds, let prouder toils be thine—

By virtue aimed, to all her friends a friend,
 Go, in the senate be thy talents tried.
 There with a real patriot's zeal defend
 Those laws for which our great forefathers died !

The 'Roland' to this 'Oliver'—leaving politics out of the question—confines itself to compliment. It is couched in the following graceful lines, gratifying enough, doubtless, to the *Authoress* :—

Let others praise *the Father's Tale*,
 And weep *the Daughter's Fate*,
 With some let *Adeline* prevail,
 Repenting when too late.

Let some admire each varied grace,
 Which *Simple Tales* combine,
 And every useful lesson trace,
 In *Temper's* wise design.

I too have praised ; my heart before
 Has with their sorrow swelled,
 But now their magic reign is o'er,
 I've found them all excelled.

Thou in them with truth unite,
 Each touching charm to impart,
 Yet there's a book yields more delight—
 To those who read—thy heart.

But in spite of his literary tastes, and the temptation to respond to such cousinly appeals as the foregoing—however sensible he might be of the attractions of society—law with him continued to remain the first object, and the main business of life. Even politics do not appear, except now and then, and in a mitigated form, to have contested the regards of 'the worshipper at Themis' shrine.'

This was very clearly shown in the year 1817, when, in

concert with Mr. Barnewall, he undertook the task of Reporter to the Court of King's Bench; a post which involved not only a close attendance in court, but no inconsiderable amount of labour in chambers, in analysing and abstracting the different cases which came before the Court. For a work of this kind, which requires a keen eye to detect the real point and gist of a legal case, and an ability to set it forth as clearly and yet as concisely as possible, he would seem to have possessed eminent qualifications. The result of five years' labour—in conjunction with his able collaborateur—remains under their joint names as a monument of their industry, and a work of frequent and valued reference among their successors at the Bar. The period over which those labours ranged was one during which the decisions of the Court well deserved an able chronicler, if the legal reputation of the judges who composed it be regarded, a period only just anterior to that which a great living authority has described as the golden days of the law. Ellenborough, though aged and infirm, still presided as chief. Bayley, Abbott, and Holroyd already formed constituent members of that unrivalled tribunal. But, however important and honourable the task of transmitting to posterity such decisions, and however great the advantage he himself derived from a more intimate study of the principles upon which they proceeded, he came at length, in 1822, to the determination of resigning the office. It is said that legal reporters do not often rise higher in the profession, a dictum to which there have, however, been many eminent exceptions. Perhaps some apprehension of this kind may have influenced him in throwing up the post. 'I have written,' he says, in a letter to his youngest brother, 'to the Lord Chief Justice to resign my employment as Reporter to the King's Bench, for I hope for something better.'

The mention of the brother addressed in these words leads irresistibly to that of an event constituting what might be called a touching episode in the life of him of whom these pages treat. The youngest child, he had naturally become the pet of the family, and his brother Edward's most of all. This affection was strengthened, as he grew older, by the contact into which he was brought with his eldest brother, by becoming, during his early days at the bar, a scholar of the Charterhouse. What a mutual pleasure was it, to the barrister and the schoolboy, when, after the week's labour, Saturday and Sunday came round; the former, with its visit to the play, and the latter, its customary walk in the Park. How many were the happy moments past in those Temple chambers! when the room looked all the cosier within for the November fog without, and 'the boys'—another brother usually accompanied him—delighted to escape from the thralldom of school, planned over the dinner-table their evening's entertainment: comedy or tragedy—Liston or O'Neil. But this constant intercourse was destined to be interrupted by the sickness of the younger brother. His health rapidly declined, and, in the spring of 1822, he finally sank a premature victim to consumption; but not before his eyes had been lovingly, but firmly opened by his brother to the impending change. It is touching to see how continually present to his mind was the image of the sick boy, and to read the many hurried lines of thoughtful kindness, written from time to time, in stray moments, often in the press of work—from circuit or sessions—in which he places before the dying youth in simple, but forcible language, the great truths of Christianity, and the proper way in which they should be regarded by one in his circumstances.

It has been felt that the following letter, written on the

occasion of the last anniversary of the invalid's birthday, may possess sufficient interest to be given at length :—

MY DEAR J——,

I have, whilst I have been here, been very anxious to say a few words to you, but after much consideration with myself, I think it is better to write down what I did wish to have said. Perhaps my letter may speak to you when I am gone, and may keep alive in you those feelings which it is my fervent prayer it may serve to excite and increase. You must be aware, my dear boy, that so long an illness as yours cannot be without danger. Whether that danger be more or less immediate, or whether it may be at a distance, God knows. But in any event, whether near or remote, we ought to lose no time for preparation. There is none of us who ought not to consider each day that he lives as possibly his last, and so to live as if it were really so. If this be so of all men, how much more is it applicable, and in a peculiar degree, to those who are sick. Lay this to your heart, my dear J——, and consider then what you ought to do. It is this on which my duty as your elder brother, and my love for you, induce me to give you my advice. Treat it as the most valuable present I can make you on this day of your birth, and whatever are the events of the coming year of your life, remember that there is a coming eternity which is far more important.

First, then, you are to consider your duty to God ; to that God who has hitherto blessed you with affectionate parents, with kind relatives, with many temporal blessings, and who now in his mercy, to prevent your forgetting him in the midst of these blessings, has recalled you to him by this affliction of sickness. What can you do for him? Nothing. Yet is he graciously pleased to accept of us the imperfect sacrifice of thanksgiving and praise. That, then, you are surely bound to give. Night and morning should witness it. Every night before you sleep, and every morning before you rise, commend yourself solemnly to his mercy. Entreat his forgiveness for your secret faults. Pray for his Holy Spirit to amend your life and give you sincere repentance, and believe, as is most true, that our Lord, who died for us all, will hereafter be your mediator and advocate to redeem

you, and to give you happiness everlasting. Whether you do this kneeling or lying down, if you do it with your whole heart and earnestly, God will hear you and have mercy upon you. When you do this, however, you should not omit to praise and thank him for his mercies, bringing your mind into a firm belief that being in his hands for life or for death, you are safe in the care of an indulgent Father, who cares for you, and knows far better than you what is good for you, and you should therefore acquiesce entirely, absolutely, and cheerfully in whatever happens.

I would wish you also to read every day a little of some book of good sound morality, and above all, of the New Testament. If you cannot read it easily yourself, as may sometimes be the case, your cousin C—— will read to you.

I should also wish you to receive the Holy Sacrament. It is very right that you should do so. As you cannot with safety go to the church at present, you should request some clergyman to come to you. I hope you will not refuse this to me, as it will give me great satisfaction.

And now, my dear boy, for your duty to man. In your case it may be brought for the present into a narrow compass. You are to be patient, to avoid fretfulness (a difficult task, I know, but then the more meritorious), to be anxious to give no unnecessary trouble, to be kindly affectioned, to be dutiful, to be charitable. If for the latter, in its sense of almsgiving, you want funds, remember my purse is open to you, without any limit, provided the objects are proper and deserving.

This is all I have to say. Much of it is imperfectly expressed, but you must take the will for the deed. If this letter does nothing else, it will, I hope, convince you (but that you do not want, I am sure, to be convinced of) that in me you have, and shall always have,

Your affectionate brother,

E. H. A.

The current of success had fairly set in, when, in the autumn of 1823, he was married to Miss Georgina Drewe, one of a family long resident at the Grange, near Honiton, in Devonshire. Henceforth, as may be inferred from their

frequent mention in his letters, motions, briefs, and references began to thicken upon him ; though at Lancaster the attorneys are still coy, and he complains of sitting idle in court. But a lucky stroke at Carlisle, where, writing in the spring of the following year, he says that he has been employed in every defended cause, and led all but one, as well as led every important felony, either for the Crown or the prisoner, served to stand him in good stead, even at Lancaster. This was a certain case of breach of promise, of which he gives the following account :—

To-day I succeeded in getting a verdict for the gentleman, which, considering my materials, is said to be a very successful effort. I am told I made a good speech, and what is more to the purpose, an adroit one. I have been much pleased to-night, after leading the breach of promise, to have a retainer given me to lead a similar case at Lancaster, in which Scarlett, Williams, and Brougham are on the other side. High odds : but, my dear G——, only wish me success, and I will fight them all. This *at Lancaster*, where I have hitherto sat without business !'

Against so formidable an array of forensic ability, however flattering the selection, he did not find himself pitted without a considerable amount of trepidation. The complete success, however, which attended this important effort as a leader, related in the following letter, amply repaid him for the trouble and anxiety it had cost.

I dare say you have thought me very negligent in not writing to you before, but the truth is, I have been in such a fuss and fidget till yesterday that I could do nothing. My brief to lead the breach of promise was delivered to me on my arrival here, and as it was my first start here, I was naturally most anxious about it. It seems that it had excited a good deal of interest among the solicitors of Manchester to know what new man they should run against the three great leaders. Why they fixed on me, who never opened my mouth before at Lancaster, I cannot tell. However, it has turned out very well ; and I may

safely tell you that I am considered to have distinguished myself very greatly. My clients have expressed themselves as entirely satisfied: the judge (Holroyd) took occasion in court, in summing up, to make a most elaborate eulogium on my speech in mitigation of damages; and all my friends at the bar tell me I have made a great hit. We shall see whether this will do me any good at the next assizes. It cannot be expected to operate before that time.

Through another channel, too, business appears to have now begun to flow in. Circuit duties clash inconveniently with employment before Committees of the House of Commons; and an opportunity is with difficulty snatched, in the spring of 1825, for running up from York to attend the first railway case—the celebrated Manchester and Liverpool Railway Committee. A graphic account has been given by the biographer of George Stephenson of the scene before the Committee, and especially of the cross-examination of the great railway engineer, which was entrusted to Mr. Alderson, whose careful study of the subject, and considerable skill in practical science, made him a formidable antagonist to one whose power of expression was hardly equal to his genius. As the chief witness in favour of the scheme, Stephenson was subjected to a severe and protracted examination as to the speed and power of the locomotive, the stroke of the engine, the slipping of the wheels upon the rails, and a variety of other points of detail. As this part of the evidence is read, the whole case seems to resolve itself, as it were, into a scientific passage of arms between the witness and his examiner; and success or failure to depend for the moment on their respective efforts.

‘Of course,’ (the question is put with reference to the proposed speed) ‘when a body is moving upon a road, the greater the velocity the greater the momentum that is generated?’ ‘Certainly.’ ‘What would be the momentum

of forty tons moving at the rate of twelve miles an hour?' 'It would be very great.' 'Have you seen a railroad that would stand that?' 'Yes.' 'Where?' 'Any railroad that would bear going four miles an hour; I mean to say that if it would bear the weight at four miles an hour, it would bear it at twelve.' 'Taking it at four miles an hour, do you mean to say that it would not require a stronger railway to carry the same weight twelve miles an hour?' 'I will give an answer to that. Every one, I dare say, has been over ice, when skating, or seen persons go over; and they know that it would bear them at a greater velocity than it would if they went slower; when it goes quick, the weight in a manner ceases.' 'Is not that upon the hypothesis that the railroad is perfect?' 'Yes; and I mean to make it perfect.'

Again, upon another point:

'Do not wrought iron rails bend? take Hetton Colliery, for instance?' 'They are wrought iron, but they are weak rails.' 'Do you not know that they bend?' 'Perhaps they may, not being made sufficiently strong.' 'And if made sufficiently strong, that will involve an additional expense?' 'It will.' 'You say the machine can go at the rate of twelve miles an hour. Suppose there is a turn upon the road, what will become of the machine?' 'It would go round the turn.' 'Would it not go straight forward?' 'No.' 'What is to be the height of the flanch of the wheel?' 'One inch and a quarter.' 'Then if the rail bends to the extent of an inch and a quarter, it will go off the rail.' 'It cannot bend. I know it is so in practice.' 'Did you ever see forty tons going at the rate of twelve miles an hour?' 'No; but I have seen the engine running from eight to ten miles round a curve.' 'What was the weight moved?' 'I think little except the engine.' 'Do you mean to tell us that no difference is to be made

between those forty tons after the engine, and the engine itself?' 'It is scarcely worth notice.' 'Then, though the engine might run round and follow the turn, do you mean to say that the weight after it would not pass off?' 'I have stated that I never saw such a weight move at that velocity; but I could see at Killingworth that the weight was following the engines, and it is a very sharp curve: it is a sharper curve there than I should ever recommend to be put on any railroad.' 'Have you known a stage-coach overturn, when making not a very sharp curve, when going very fast.' 'That is a different thing: it is top-heavy.' 'Will none of your waggons be top-heavy?' 'They will not. I should construct them so that they should not be top-heavy.'

It is impossible sufficiently to admire the steadiness and ability with which the attack was sustained by Mr. Stephenson, and it was not until a later stage of the case, when he had to give evidence on the plans made by his surveyors, and the estimates founded on these plans, which were clearly imperfect, that he began (in the words of his biographer) to feel embarrassed and confused in the face of the array of distinguished counsel and engineers who were bent on upsetting the project.

With the event of this memorable contest, which, during two months, had been carried on throughout with great pertinacity and skill, especially on the part of the opposition, and in which, it may be observed in passing, Mr. Alderson was simply concerned as discharging an obvious duty to a client, every one is familiar. The preamble being carried by a majority of only one, the first clause was lost by a majority of nineteen to thirteen; and on the same fate attending the second clause, empowering the company to take land, the bill was withdrawn by Mr. Adams on the part of the promoters.

How amusing it now is (as Mr. Smiles observes) to read the extraordinary views entertained as to the formation of a railway over Chat Moss, and the impossibility of starting a locomotive engine in the face of a gale of wind. But after all, the shortsightedness on either side would seem to be but a question of degree. Stephenson, indeed, might more clearly descry something of the future by the 'dry light' of his own genius; but what degree of appreciation of the consequences does the view of the supporters of the bill generally display—in proportion to the infinity of the result—when they are found hastily disavowing the twelve miles an hour as the maximum pace, and regarding the conveyance of passengers as possibly some slight addition to receipts which were to be derived, so far as the main purpose of the undertaking went, from the carriage of goods?

From the cross-examination of Mr. Stephenson, in which Mr. Alderson's services were of sufficient value to render a continuance of them on the succeeding days a great object with the opposing parties, he hurried back to fulfil his *circuit engagements in the north*; in spite of the desire warmly expressed by Lord Sefton, Mr. Macdonald, and all the persons concerned on that side, that he should remain at least another day, and their offer, if he would consent, to send him down to York in a post-chaise and four. 'After all,' he writes, consoling himself for the premature withdrawal from this case, as well as from a good deal more very lucrative parliamentary business, 'it is the *regular* course of my profession by which I must hope to rise.'

With less equanimity was he disposed to regard an interval of involuntary leisure at Appleby in the earlier part of the same spring. There the hereditary sheriff, Lord Thanet, in his own absence, had omitted to appoint a deputy, and no grand jury being able, consequently, to be summoned, business was brought to a standstill. The

Court being adjourned from day to day, and the season being unusually mild, no snow being visible on the tops of the hills,—a most rare occurrence at that period of the year—one of these days of enforced idleness is devoted to the ascent of a mountain named Drifton Pike, ‘where,’ he says, ‘we stood on an eminence looking all round at the fells. Before us lay cultivated fields and woods, and Appleby in the distance. Behind, and on each side, hills and clefts and grassy fells—just behind us, a most singular cleft in the mountains, cut sharp through, and scarped down as by some gigantic spade. It looked like an entrance cut into the interior of the hills.’

No appointment arriving from Lord Thanet, although anxiously expected, instead of going into court, he continues his rambles among mountain-tops, for which he avows himself to entertain ‘a passion.’ ‘To-day we have had the finest mountain view I almost ever saw; with picturesque hills at the top, and a most beautiful outline to the sky; at the bottom, woods and meadows green. It only wanted water to be quite complete. And what an accompaniment, think you, there was to all this? On the grassy hill, from which this magnificent scene is viewed, stands the gallows. At least the criminal has a most splendid last view of this world. The Scotch, who at the time of 1745 used to wish, when executed, to hang with their faces to the blue hills of their own land, could have seen nothing more beautiful than this.’

The beauties of nature were not apparently the only source of amusement for leisure hours in the Lake district. There are others less romantic, for which he professes an interest. ‘Yesterday,’ he writes, ‘I went to see a great wrestling-match, and was so much entertained that I stood in pouring rain for about an hour to see it. Though wet through, I caught no cold by my zeal for athletic perfor-

mances. It is infinitely better than boxing ; for you have all the exhibition of power and muscular force, without any blood or damage to the persons engaged. On the ground we saw some of the Cumberland champions.'

But however annoying the delay occasioned by the carelessness of Lord Thanet's agents, it was chiefly so as postponing his return home ; where various engagements awaited him—among others a meeting at the Bank of England, to which he had been appointed standing counsel. To have to return upon his steps from York, as the Judge under the circumstances arranged to do, was of itself an irksome addition to his travels. 'One inconvenience,' he writes, 'arising from Lord Thanet is this, that it will probably delay my return, as the Judge (Holroyd) is going back to Appleby to try a case of forgery ; and in that case I shall have, I fear, to go too.' The letter concludes with a translation from Pliny's letter to his wife Calpurnia, upon which he had stumbled in his miscellaneous reading, and the sentiments of which he playfully declares applicable to his own case, 'only that it was Pliny, and not his wife, who had been left at home.' 'It is scarcely to be believed how much I regret you. The first reason of it is the love I bear you. The next that we have not been accustomed to be separated from each other. It is on this account that for the greatest part of the night I lie awake and think of you. On this account that in the day, at the hours I was used to meet you, my feet, as it were by habit, carry me to the place of our usual meeting ; and I return from thence sorrowful and disappointed, because you are not there. The only time free from inquietude is when I am occupied by forensic business. Judge then how wretched must be my life, when this labour is my only consolation.'

The period of his early married life may be passed over

with but cursory mention. It will suffice to observe that it comprised two aspects; showing, the one, a uniform course of domestic happiness—interrupted, but only interrupted, at the outset by the death of his eldest child—and the other, a steady advance towards a high degree of professional success. One event, however, which occurred in the year 1826, did not fail to exercise a certain influence over his mind with reference to the cost at which that success is often earned. The premature death of his near connexion Lord Gifford, the Master of the Rolls, attributable, as he conceived, in some degree to over-work and worry, while it grieved and shocked him by its suddenness, left, not improbably, an impression upon his mind that the great prizes of the law are not unfrequently attained at an expense which even they will hardly warrant. At least it may be inferred, from expressions in his letters, that henceforth his thoughts, as regards the future, turn more in the direction of a puisne judgeship, and less towards a prolongation of labour at the Bar, or an entry into Parliament.

The success by which, at Lancaster, his efforts in the breach of promise case had been attended, were not followed, as he had himself anticipated, by any immediate result.

‘We have a great many causes here,’ he writes in 1827, ‘but I have not the good fortune to see many of them come to me as yet. I grudge having left my rich harvest in town to pick up a few straggling beggarly ears of corn at this place.’ But by the following year there is a sensible change for the better, to judge from the tone and substance of the following, written from that place.

‘I won both my verdicts in the special jury causes against Brougham. James Parke tells me I must soon lead this circuit, and that he is satisfied that I can do the work. Bayley, J., after hearing me lead these two causes, offered to call me within the bar, or in other words, to make me a

King's Counsel at Lancaster, a privilege which the judges possess at this place. I have declined the honour for the present circuit, but I mean to accept it next time, if offered, and so I told him. He laughed, and said, 'Well, you are on the road to promotion,' on my mentioning to him the appointment as Commissioner for Amending the Law.'

The concluding lines of the foregoing allude to his appointment as one of the Royal Commissioners for the Amendment of the Law, issued by Mr. Peel in the year 1828. 'I have received,' he says, 'in a letter written shortly before that last quoted, 'a communication from the Home Secretary, appointing me one of the new commissioners. Parke and Patteson are also appointed, to my great satisfaction, as they are excellent coadjutors, and persons on whose opinion I can well depend. Is it not a testimony to the Northern Circuit, that three out of the five commissioners should be chosen from it to so important a work? * * * * *

I see myself, and all tell me, that I must soon have a chance of leading the circuit. They all press me to ask for a silk gown at once. I think I shall do so. But there is time enough to consider of it.'

From York, in the same year, he writes that Anthony (his clerk) is in despair at having been obliged to refuse four briefs in one day alone, his master having been previously retained on the other side. Perhaps an indication, no less unmistakeable than this rapidly accumulating business, of his approach to the front rank of the Circuit Bar, may be traced in the following casual notice of a dinner given by the Archbishop of York, according to hospitable custom, to the Bar; in which, probably with something of the natural feeling of a *laudator temporis acti*, after speaking of his Grace's splendid entertainment, he adds: 'Of the company I cannot say so much. I suppose it is

because I grow older, but I really think the circuit is not so well filled at the lower end of it as it used to be. I see among them certain persons who seem mightily out of element in an archbishop's palace.'

The eagerness with which the relaxation of the Long Vacation is anticipated outweighs even professional interest, to judge from the satisfaction with which he alludes to the scarcity of business at the second Lancaster assize for this year. '*Fortunately*,' he writes, 'we have but little to do; but do that little long. I shall not make much money here; but then I am decidedly getting into business at this place, and that satisfies me. I get briefs I know not how, or from whom, or why—a decisive proof of being in business. As long as you can tell why a brief comes, as from favour, or affection, or interest, it is nothing. My clients now come from the streets.'

At York, in the spring of 1829, among his other retainers, was one for the prosecution of Jonathan Martin, the notorious incendiary of York Minster.

'I have just been reading my brief,' he writes, 'one of the most curious I ever had. The way in which the deed was done was this. He stayed behind after the afternoon service, and after the bells had been rung as is usual, being then left alone, he went up into the belfry, and with a razor cut off about eighty or ninety feet in length of the *prayer bell-rope*, which being usually rung *from below*, had been drawn up and coiled up to that length there. With this rope he knotted himself a sort of rope-ladder, and throwing it over the iron gates of the choir, he climbed over by means of the knots. Being in the choir, he struck a light with a flint and his razor, lighted a candle which he had brought, collected the prayer-books, and set fire to the paper close to the carved work at the archbishop's throne in two piles. He then cut away a silk

curtain, gold fringe, &c., which *he stole*, and getting back by his rope-ladder into the body of the cathedral, escaped through a window on the north side (the most unfrequented part). He had provided himself with a pair of pincers, by which he forced the window, and let himself out by his rope-ladder to the ground. My impression is that he is too mad to be convicted, having been already twice confined in an asylum ; but there was much method nevertheless in all this.'

The disinclination to embark on the sea of political life, which had been strengthened, as has been already mentioned, by peculiar circumstances, is attested by the impressions to which a rumour, which about this time reached the circuit, of his probable selection for the post of Solicitor-General, gave rise in his mind. The dismissal of the Attorney-General, Sir C. Wetherall, had given rise to a variety of surmises ; and a report reached York during the Spring Circuit of 1829, that Mr. Alderson was named as a probable successor to the post of second law officer of the Crown.

'This evening,' he writes, 'no less a person than Brougham took me aside, and told me that he had received two letters from town, and that I was named as one likely to be the successor in the present vacancy, and that I should probably hear of it in a few days. I neither believe nor disbelieve this, but I am much in doubt whether I should really wish to have it or not. On the whole, I think not. I dread to quit my present station, where I am so happy, and to launch into an unknown sea full of trouble and anxiety, and particularly at this unquiet period. For the present, however, I will think no more of it. If it comes, it comes ; if not, I am not sorry.'

The vacancy in question being shortly afterwards otherwise filled, he was thus—much to his satisfaction—saved .

from the anxiety of a choice which he dreaded being called on to make. It was with no tinge of disappointment, but an undisguised feeling of relief, that he learnt the appointment of another to the vacant office, and was thereby enabled to dismiss altogether from his mind a subject which, from its taking him completely by surprise, rather than from any pleasurable emotions which it awakened, he admits 'to have thrown him a little into a fuss.'

However slow a matter it may have been to establish a permanent footing at Lancaster, it would seem by 1829 to have been unmistakeably accomplished.

'I was engaged,' he writes from that place, 'literally from nine o'clock yesterday morning till seven o'clock at night in the Civil Court, having led every cause but one that was tried, and I was junior in *the* one. This is extraordinary success; and I almost fear may be productive of jealous feelings. I believe literally I have had two briefs for one that any one of the leaders has had at this place. I am glad, however, that I have not a silk gown, so as to have come into more *direct* competition. I really do feel sorry for it, much, of course, as I ought to be flattered at the station I seem to hold.'

'I hear,' he adds, anticipating the probability of promotion to the Bench, 'that Bayley is asking to be the new Baron in place of Hullock. Perhaps this may open the King's Bench to me. My chance, I think, is not very remote. Meanwhile I shall be glad to have my holidays, and go off touring—anywhere. I am like a boy counting his holidays before they begin.'

The Spring Circuit of 1830 proved to him an unusually profitable one; the York Assize being marked by a great will case—Wright and others *v.* Tatham, the first of the three trials of the Hornby Castle cause—which created a great interest, and so much local

excitement, that it had been on that account removed from the Lancashire Assize, to which it would have naturally belonged. In this cause he was retained, together with Sir James Scarlett, Mr. Brougham, and Mr. Cresswell, as counsel for the defendant, Admiral Tatham. The question for trial was briefly this: whether a will made by Mr. John Marsden, devising the manor of Hornby under certain conditions to one of the plaintiffs, was a true and valid will, or not. Wright had been the steward and confidential adviser of that gentleman; and the theory of the defence was, that he had availed himself of opportunities which that circumstance afforded for obtaining from Mr. Marsden, whose intellect had never been strong, a will which devised very valuable property to his own son. After a trial which lasted over six days, a verdict was returned in favour of the plaintiff, but with nominal damages, the case being an issue directed by the Court of Chancery to be tried at law; and the ultimate decision of the cause was for the present virtually adjourned. Before it reappeared upon the circuit, no less than three of the counsel engaged in it on this occasion, and one of those Alderson, were precluded from further connexion with it in that capacity, having been in the interval raised to the Bench.*

The rich harvest of the spring was the more satisfactory, that in the summer the bustle and excitement of the general election, consequent upon the commencement of a new reign, monopolized interest and attention to an extent which sensibly affected the profits of the circuit. At Durham and Newcastle the Assizes are 'wretchedly bad,

* This cause was ultimately tried at Lancaster, before Mr. Justice Coleridge, Mr. (now Sir Cresswell) Cresswell leading for the defendant, against the present Lord Chief Baron, who on all three occasions led the cause on the other side. The jury, by their verdict, finally established the incompetency of Mr. Marsden to make the will, and Admiral Tatham became possessed of the property as heir-at-law.

hardly sufficient to pay our way.' Better things were, however, looked for in the second division of the circuit, where the bustle might be deemed to be subsiding; and the event proved that this anticipation was not a fallacious one. 'On the whole,' he writes from Lancaster, 'I shall return well loaded.'

Never himself a member of the House of Commons, though not for want of sundry overtures, which for various reasons fell to the ground, it would appear that, upon the occasion of the elections of 1830, he contented himself with such an amount of electioneering as the canvass of a contested borough entailed. Newark was the scene of these operations, where an unusually hot contest was anticipated between Messrs. Willoughby and Sadler, the Conservative candidates, and the late Lord Truro, then Mr. Serjeant Wilde, as the champion of 'the Blues.'

'Here I am,' he writes from that place, 'in the bustle of a contested election, but at present in good humour. We get on very slowly in the poll, and expect to be behindhand to-morrow; but on Wednesday to recover our ground. As long as his strength lasts, Wilde is sure to poll faster than we can, for his votes come more readily, being the popular side. But we expect to win with ease in the long run. I think they show symptoms of weakness by the extravagant quackery which they display. What think you of a procession headed by fifty virgins (ladies, it is currently reported, of a certain sort), in white, with flower-baskets? I walk with perfect confidence into both mobs. Their talk amuses me much; and as far as I see, those of them who are sober are very good-humoured *as yet*. How they will be when we come to beat them, I don't know.'

These anticipations of victory proved correct; and a retreat from the town was safely effected, 'in spite of the mob having been very savage' on ascertaining the result.

'We had a great row last night,' he writes from Scarthing Moor, on the way back to York Assizes; 'torches and tar-barrels lighted up all over the market-place, and an immense mob and procession. The other party then assembled, and there was a battle. It was a curious sight. I surveyed the *mêlée* from a window, not wholly without the possibility of a missile hitting me. We got ahead yesterday, and finished to-day: Willoughby, 775; Sadler, 745; Wilde, 651. I should think the latter would never try again. It has been a most bitter contest.'

Although his personal intervention was limited to the election at Newark, there is another in which, judging from its frequent mention in his correspondence, he took a lively interest. This was that of Mr. Brougham, for the county of York. 'It is certainly,' he writes, 'a great feather in his cap; and I do most sincerely rejoice in what will give that charming old lady (Mrs. Brougham, the Chancellor's mother) pleasure.' In a less serious mood, he perpetuates a circuit incident in an epigram, the point of which is furnished by the recent choice of the Yorkshire electors. Mr. Brougham had been making a speech on slavery at a meeting of the Wesleyan Methodists at Newcastle, and it gave rise to the following lines:—

Old Harry of late to a meeting-house went,
And he talked, (how he talked!) to their joy and content:
But what did he talk of, to suit that connexion?
Why, you goose, do you ask? Sure he talked of *Election*.

One of his latest appearances in a Parliamentary case merits notice from its connexion with a question memorable as one of the precursors by which the momentous one of Parliamentary Reform was ushered in. This was before the House of Lords, in behalf of the Petitioners against the Bill for the Disfranchisement of the Borough of East Retford. Of the two proposals

before Parliament, one, involving the total transfer of the franchise to Birmingham, and the other, its extension to the adjacent Hundred, the latter was, it will be remembered, ultimately adopted.

The following paragraph, at the opening of the speech in which he summed up for his clients, bears the impress of the times in which it was spoken:—

‘If I were here to presume to discuss the general question of Reform, I am sure your lordships would immediately tell me that I was out of my place, and not performing my duty. If the decision here is to be influenced by general considerations of political expediency; if your lordships are to sacrifice this borough as a sort of scapegoat for the purpose of quieting certain troublesome persons, in order that they may not complain of your being inattentive to the complaints of the people as to reform, we have, undoubtedly, no right to be here. But I conceive that your lordships by hearing us have given us a pledge that those are not the principles upon which this is to be decided. It is not to be decided upon political expediency, and I should therefore not only waste time if I adverted to such questions, but I should do more—I should be forfeiting the respect due to your lordships’ house, were I to attempt to discuss them. For the very presence of counsel at the bar affords a pledge that your lordships do not intend such points to be discussed at all.’

The principles upon which the case should be decided, as gathered from preceding ones, were, he submitted, these—That legal bribery must be proved, and not mere vague corruption—that that bribery must extend to the majority of the voters—and that it must be shown to have existed for a long period of time prior to the last election, as well as at the last election. Unless these points were established—and upon each he contends that the case of

his learned opponent failed—the jurisdiction of their lordships, so to say, was not founded.

The Bill of Indemnity, under which the evidence had been given, becomes, in the following period of his speech, the subject of severe comment :

‘ I am brought to the consideration of the extraordinary manner in which this case has been pressed upon your lordships—the extraordinary nature of the evidence which has been received : the bill of indemnity under which the evidence has been given : and the manner in which persons have been called to the bar of your lordships’ house, and compelled to disclose circumstances utterly discreditable to themselves. I have had the pain of seeing a gentleman of fortune and station called to your lordships’ bar, and compelled to disclose what happened ten or twelve years ago—compelled to disclose the whole of his papers—to divulge all the secrets committed to his honour and integrity, and to declare all those facts and circumstances which my learned friend, in the exercise of his discretion, thought material to be used on the present occasion. A more painful, and give me leave to add, a more dangerous precedent has scarcely ever been made. Do we not know that it is commonly said in this country of England that persons sell seats and boroughs ? Whether this is said truly or falsely, it is not material to consider. Are your lordships prepared to expect to see gentlemen of fortune (not indeed members of this house, because you are privileged), but are you prepared to see gentlemen of fortune in the kingdom of England brought to the bar of this house, and asked the question, ‘ Do you know so-and-so ? Do you recollect upon any occasion before the election of 1826 seeing that gentleman when he proposed to give you 5000*l.* if you would bring him in for the borough of A ? ’ ‘ I do.’ ‘ Did you receive the money ? ’ ‘ I did.’

‘Upon the election before did you receive the same sum from Mr. B.?’ ‘I did.’ Whereupon a bill is brought in to disfranchise the borough of A, B, C, or D, upon evidence extracted from the mouths of the parties themselves; and all this has been over ten or twelve years. But your lordships will recollect that this case will be quoted as the precedent. And if it be complained of upon any similar occasion in future, it will be in the power of counsel to say, ‘In the case of East Retford your lordships ordered a gentleman of fortune, who had stood for the borough, to produce all his papers, documents, and writings, and compelled him to disclose the secrets which the people of East Retford, ten or twelve years before, had committed to his charge; he was compelled, at the hazard of commitment, to disclose all these circumstances. And will your lordships now prevent this investigation from taking place? Will your lordships now refuse to act up to the precedent then established in 1830? Will your lordships not call before you all the persons who can give you information upon this subject?’ What will be the consequence of all this? Why, my lords, this will be parliamentary reform in the most oppressive shape.’

Shortly after his return to town, and the resumption of his professional duties, his career at the Bar was brought to a close by his appointment as one of the three newly-created judges, and in the course of November, 1830, he took his seat on the bench in the Court of Common Pleas, presided over by Lord Chief-Justice Tindal. He left the Northern Circuit without ever attaining the rank of King’s Counsel, and when he might be said to be just on the step to the lead of the Circuit, engaged in all the most important causes as second counsel, but frequently, and in particular places, acting as leader. ‘Heir-apparent to the Crown,’ to quote his own expression, ‘upon the departure

of the present holders.' Scarcely were the formalities of his appointment completed before his services, as a criminal Judge, were deemed requisite by the Government of the day, and in concert with Baron Parke (now Lord Wensleydale) and Mr. Justice Vaughan, he was despatched on a special commission into the southern counties, to try the rioters, by whose mischievous proceedings, as 'machinery smashers,' that portion of the country had been widely disturbed. In Hampshire the commission was assisted in its labours by the addition, as coadjutors, of Mr. Sturges Bourne, Mr. Pollen, and the late Duke of Wellington, and accompanied throughout by another illustrious soldier, Sir Colin Campbell, now Lord Clyde. How acutely the new Judge felt the painful duties of his office, thus early imposed, may be gathered from expressions in the following letters :—

Winchester, Dec. 19, 1830.

I was glad to give you an account of the perfect quiet of this place, and am able to confirm it to-day. We have been in great state to the cathedral, accompanied by Mr. Sturges Bourne and Mr. Pollen, our co-commissioners. The Duke of Wellington joins us on the bench to-morrow, and means, I understand, to stay with us during the week. The business is frightfully heavy. We have nearly three hundred persons for trial, and it will be impossible to finish within the time appointed, without great good luck, and very hard work. We all sit together to-morrow; but on Tuesday Parke is to sit alone in the other court, while Vaughan and I go on together. On Wednesday I do so, and he sits with Vaughan: and so on on alternate days. A rumour has reached us of a Special Commission for Dorsetshire; and as we are so near, I am afraid they will order us on the service. If so, we shall not be home till the middle of January. But I will not expect evil; we have enough, God knows, to do in having to try six hundred felons. As far as I can make out, the people indicted were not in distress. They are persons of busy or bad character. The machinery destroyed is not agricultural, but

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commercial; and I firmly believe that there are a set of bad people operating on the distressed poor, who have done all the mischief. * * * *

We had a very good sermon to-day, and afterwards the sacrament. The service *began*, as is the custom in this cathedral, by the Litany, which was read very beautifully by the old dean, and the responses sung most charmingly by the choir. The effect was very striking with the service commencing with those beautiful and affecting supplications of the Litany, read in a trembling voice by an old man, and then the choir repeating them. Pray for me, that I may be able to do justice in mercy; for we have an awful responsibility here.

The following is written a few days later:—

Your letters are a great consolation. The truth is, I am thoroughly sick of this business, and hate it. We have such a terrible responsibility, and I feel to be ashamed and angry with myself for suggesting, as I must do, that the life of this or that man should be sacrificed. As to some there is no doubt: but then as to others, there is the necessity of example on the one hand, and the real ignorance and unconsciousness of the people that they were doing what was likely to sacrifice their lives on the other. I have convicted dozens of robbery whom I feel sure I might have safely left in the room with my purse, without their stealing it. * * * *

I have been trying a case under the Riot Act, and acquitted the prisoner on the ground of the proclamation not having been correctly made, by leaving out 'God save the King.' The Act is so very severe a law, that one requires a very minute observance of all its provisions. There is really no distress here proved to have existed; all concur in saying that the distress is much less than it was last year; and would have been much less if there had not been this tumult. The average of wages has been nine shillings a week, and married men have generally had three shillings more; in addition, in many parishes, fuel, and in many cases, house-rent also. One man who made part of a mob requiring 12s., was actually earning 11s. 9d., and receiving 3s. more, besides other helps. This fellow, then, receiving 14s. 9d., creates a mob that he may get 12s.! a piece of folly

inconceivable, if one had not seen how these people have been gulled and goaded on by a set of artful and unprincipled scoundrels. I like both Sturges Bourne and the Duke very much; and I believe they are quite satisfied with our doing the work. * * * *

Yesterday I sat alone till eight at night from nine in the morning, and got through the cases of about twenty-three prisoners, of whom fifteen or sixteen were capitally convicted. Among my cases of to-day was a very bad robbery, in which I must leave one for execution. One witness appeared here in behalf of the prisoners, and persisted, after I had cautioned him, in giving evidence. By his own evidence, he showed himself present at the robbery, and I ordered him into custody, and he will be probably transported for life, if not hanged! What strange folly and infatuation! These people have no idea of the risk they run; and they really will lose their lives without knowing why. * * * *

Winchester, Dec. 29, 1830.

I am inclined to think that we shall finish here this afternoon. We have appointed to-morrow morning to perform our last terrible duty of passing sentence of death on seven unhappy people whom we have, after a long consultation with the Duke and the other Commissioners, finally resolved on leaving for execution. There will be a tremendous list—sixty at least—of those transported for life, and a great multitude also for seven years. The minor punishments will be also very numerous. So black an assize has not been seen for a long period. * *

The anticipation of an extension of their labours to Dorsetshire proved correct: and thither, after an assize at Salisbury as heavy as at Winchester, the Special Commission proceeded. Among the cases for trial at Salisbury was one of sending threatening letters, showing in a striking manner the doubtfulness of proof of handwriting; the substance of which is narrated in the following letter:—

I convicted the prisoner on what appeared to be the clearest case ever proved, As soon as it was over, and judgment pro

nounced, it was suggested, *very improperly, not till then*, that the letter was written by the prisoner's son. No son had been even mentioned as in existence till that time, or that his handwriting resembled that of his father. Both these facts afterwards appeared very clearly to be the case. Then the principal facts against the father were, that he had three nephews under charge of felony by the three persons to whom the threatening letters were written, and the very curious one that the three letters fitted exactly with a piece of blank paper found in a desk where the prisoner said he kept his papers. But this desk was unlocked, and consequently it is possible that the son may have taken the sheet out, cut off the three pieces, and left the fourth behind in his father's desk. And the son would have the same animosity against his cousins' prosecutors as the father against those of his nephews. So that a very clear case became a very doubtful one. Nevertheless, I believe that both father and son knew about it, and that it may be that the one wrote, and the other dictated, and the rather, that when I was passing sentence, the father, who asserted his innocence, did it in language which did not appear to me material at the moment, I not having any suspicion that there was any son living with him, or that it was at all likely that the papers could be in his handwriting. He said: 'I am innocent; I never put *my hand* to it.' Now if it was his dictation, and his son's writing, this is just the sort of fetch which a half-cunning rogue would use. There being indictments for the other two letters also, I have directed a second to be tried, and the son is then to be put in the box and cross-examined. I should not wonder if it end in transporting both father and son for life. * * * *

I find the papers are beginning to talk of our severity at Winchester. I wish we could get rid of the responsibility altogether; but reviewing our judgment, I still have no misgivings as to our having come to a right conclusion. Those who don't know all the facts, and all the doubts, and all the deliberations, can hardly judge with accuracy on such points. It is, however, very pardonable in them to err on the side of mercy, however embarrassing it may be to others.

At Dorchester the calendar was comparatively light,

and the business was rapidly disposed of. The assize was opened with the delivery of a charge by Mr. Justice Alderson, which he describes as following the preceding ones of his brother Judges, much as the hash after the haunch.

I have just delivered my charge (he writes towards the close of the second week in January), and have been much complimented on my production. It is difficult to go over a third time the same ground, and say anything new. But I think I did so really. * * * * *

To-day we give a dinner to the other Commissioners for this county, Lords Digby and Shaftesbury, Sir Colin Campbell and Mr. Wollaston. Sir Colin has been our attendant throughout, and I am quite delighted with him. We were escorted hither by three hundred yeomen on horseback, volunteers to pay us honour, and by a great number of carriages and gentry, headed by the High Sheriff, Lord Shaftesbury, and Mr. Wollaston.

How I long to see you. What most moves my pity in the case of these poor felons is their being sent far away from their wives and children; for I think of the agony I should feel in parting from you and my dear children, to meet no more probably in this world. Alas! people think little of any punishment but death, and yet transportation for life seems to be nearly as bad.

The newly appointed judge had his full share of circuit duty during the year following his elevation to the Bench. The Special Commission, which lasted into the middle of January, was succeeded by no less than three circuits. In March he started with Mr. Justice Gaselee as his colleague on the Norfolk Circuit, which he was glad to obtain, as affording him an opportunity for visiting his father at Norwich. Then, in the summer, he was to be found again in the scene of his labours at the commencement of the year—the Western Circuit. That finished, he hastened to join his family at Weymouth, where he had arranged to pass the summer; and where, with the exception of a short visit to

town to attend the coronation of King William the Fourth, the months of the long vacation were passed. Finally, in the December of the same year, he was despatched with Mr. Justice Patteson on a winter assize into the counties of Kent and Sussex. At Lewes, in the latter county, the judges were invited over to Brighton to dine with the King, who was at that time residing at the Pavilion.

The following gives some account of their visit and reception :—

We arrived in good time, and were received by Sir Frederick Watson, who proceeded at once to give us the *carte du pays*. The party consisted of Princess Augusta and Prince George of Cambridge, Colonel and Lady Mary Fox, Sir Philip and Lady Sophia Sidney, Lady William Russell, Mrs. Fitzherbert, Mr. Wood, the prince's tutor, and Mr. Dodd, a clergyman who had been preaching before the King. Soon after our arrival, their Majesties entered the drawing-room, and the King received us most kindly, presented us to the Queen and Princess Augusta, and began talking of the circuit. He was a good deal interested in the criminal trials. At dinner, the King commanded us to sit on each side the Queen, who was most gracious, and conversed very affably and agreeably. His Majesty began to compliment me on my youth, on which I amused him by telling him that in consequence thereof I had the honour of serving him in a double capacity, that of judge and militiaman. At dessert there was a dish of sweetmeats before the Queen, who picked out a little gilt drum and fife, and in the most good-natured, laughing way, turned round and gave them to me as a military man. I took them, and said that I felt the honour, and that I should preserve them as a mark of her Majesty's gracious favour, and give them to my children; upon which she inquired about the children, and both the King and Queen have sent them a packet of bonbons, which I brought away. After dinner we went into the drawing-room and had coffee. I was ordered to sit down near the Queen, and in fact between the King and her Majesty, and they were pleased to talk much to me. The dining-room is magnificent; somewhat like what one might suppose the banquet-

room of the Caliph Haroun Alraschid, or the Moorish palace at Granada, to be.

Prince George is coming over to see the trials at Lewes. He seems a nice boy, about the age of seven to nine. Both the King and Princess Augusta asked after Lady Gifford and the young lord, and spoke in very kind terms of poor Gifford. The King asked whom I had married, and being told whom, he, when the last toast of 'The Land we live in' was given, turned to me and said, 'My lord, I give you Norfolk and Devonshire.'

In the spring of the following year, 1832, he revisited—for the first time in his new capacity—the Northern Circuit. Probably the consciousness of being in well-known scenes, and among barristers whose good opinion he was, from old acquaintance, naturally anxious to win in the discharge of his new duties, served to put him on his mettle, and made him the more anxious to give satisfaction. This laudable anxiety is apparent from the tone of the following extract taken from his most private correspondence, no less than the modest estimate he himself entertained of his judicial abilities. Speaking of the causes at Carlisle:—

I hope and believe (he says) that I have tried them all right, although baited with point after point of law. I have had, therefore, a good breaking-in, and have shown both blood and breed. I only wish that I may be able to get through the circuit without many blunders, as I walk always in fear and trembling in such cases. You won't believe this, I know; but I assure you it is true. I know myself too well, not to be aware how much I fall short of what I ought to be as a judge, and am in constant fear that I shall be found out by others also. Perhaps I am found out already; but no matter, I must do as well as I can.

In the summer he went for the first and only time the South Wales Circuit. The experiment of a Welsh Circuit was only once in his life repeated—when later, he took the other division of the Principality—for he disliked at

all times the necessity of trusting for much of the evidence of witnesses to an interpreter ; and to an extreme degree in a case of importance, when, for instance, human life might be at stake. At Cardigan, on the former of these two occasions upon which he visited Wales judicially, a somewhat curious incident befel him. The defendant in an action which stood for trial at the Assizes there sent to him, on his arrival in the town, a statement of his case with a ten-pound note enclosed. The next morning, upon taking his seat on the Bench, he mentioned in open Court what he had received upon the preceding evening, and declared his intention of placing the letter in the hands of the Attorney-General for the purposes of a prosecution against the offender. It afterwards, however, appeared that this extraordinary proceeding was the result rather of ignorance than of criminal intention ; and after returning the money, and severely censuring the conduct of the defendant, the judge agreed to allow the matter to drop.

The summer, after the duties of the South Circuit were brought to a close, was spent in visits to various parts of the country. While staying with his brother-in-law in Devonshire, he was plunged into intense anxiety—happily only for a few days—by the alarming illness of his wife. The danger passing away almost as suddenly as it had supervened, gave rise in his mind to a feeling of deep and rapturous thankfulness, which appears to overflow in his letters of this date. An anxiety so overwhelming left no space, while it lasted, for thought of anything else : it was not till it had passed, that he pours out his whole soul in a letter to his sister upon a subject of deep yet painful interest to them both, and in terms, in which gratitude for the withdrawal of the danger by which his own happiness was so lately threatened, mingles with sympathy for one

which inevitably impended over her. This was the hopeless illness of her eldest daughter, already rapidly drawing to its termination. Something of his feeling may be gathered from the following extract, written when the end was close at hand, to the afflicted parents :—

We feel the deepest interest in your letters giving us an account of dearest J——’s present happy state. For I must call it by its true epithet—it is happy for her. You and her father will feel the deepest sorrow at losing the pleasure of living with so dear and pure a child ; but she will dwell for ever with her Father in heaven. She may well say ‘ weep not for me, but for yourselves,’ for assuredly she goes to the possession of what eye hath not seen, nor ear heard. And we who are left behind, if we could but see what we ought to believe—if we walked by faith, and not by sight, would joy also—but alas ! our faith is weak, and so we sorrow ; but surely not as those without hope. Do not think ill of yourself, my dearest sister, that you cannot arrive at this state yet. You will do so in God’s good time. He can and will give strength to you, and can change your sorrow to joy—a joy which no man can take from you. I think of you very often, and pray for you that you may be strengthened in this affliction ; and God grant that you may be so. Unto His care, as unto that of a merciful and gracious father, I know that I may safely commit you, and that he will not suffer you to be afflicted except for your eternal good. ‘ God,’ says Jeremy Taylor, ‘ often sends pardon without affliction, but never affliction without pardon, unless we abuse it.’

The following are portions of letters written from the Spring Circuit of 1833. Among other topics, they indicate the anxiety with which he regarded the troubled state of the political world :—

Appleby, Feb. 19, 1833.

We had a most striking drive over Stain Moor yesterday ; the mountains were all covered with snow, and the country, which is naturally very wild, looked doubly so in its wintry garb. The sun shone brightly and warmly the whole time, and the cloud

shadows on the hills were very picturesque. To-day we have had a very fair sermon, I ought to say a very *fine* one, for it was Bishop Horne's grand assize, from our chaplain. It is quite refreshing to hear the old divines, with all their occasional quaintness, for there is such a mass of information and such 'a well of English undefiled' in their writings as to please me exceedingly. They are, after all, our great classics, and he who does not admire them has no taste nor any real scholarship, and but little feeling for religion. Did you ever read Horne's preface to the Paraphrase on the Psalms? If you never have, do so forthwith, and if you don't like it, I shall be disappointed.

I saw on a tombstone in the churchyard here the record of three persons of the name of Hall. The grandfather died in 1716, aged 109, and the father aged 86, and the son died in 1821, aged 106; so that the father had seen a man (his father) who saw James I., and also a man (his son) who saw me, or might have done so. * * * *

The papers inform us that we, the judges of England, are not to be compelled to try the Irish felons, as was reported: and very glad I am to escape the job. I see Ministers stand up for sinecures like their predecessors, and are still able to command a majority on that ticklish subject, which looks rather as if 'the reformed' would do much as the 'unreformed' in a short time. 'Don't be afraid,' said Dr. Johnson to a young gentleman, 'you will soon become a very pretty rascal if you live a little longer.' I see O'Connell and Shiel, Mrs. D——'s friends, have again been making furious speeches in Parliament against their old allies, the Whig Ministry. Why does she not keep them in better order? Make my remembrances to her *nevertheless*; *quand même*, as the French say.

The House of Commons seem to be going on as I anticipated towards the establishment of a tyranny—that of the representatives of the people. Now, as I hate all tyranny, that does not console me so much as it may the Whigs. In the meantime it behoves us to be prepared for the evil days which seem to be coming on. * * * *

At Newcastle he gladly availed himself of an oppor-

tunity of rendering, in his judicial capacity, an unexpected service to the Government by the introduction into his charge of some remarks which had the effect of preventing a threatened open-air meeting, which was viewed by the friends of order with considerable apprehension. The following is his own version of the matter :—

We were alarmed on our arrival by information of a great Radical meeting called by the Northern Political Union, to be held upon the Town Moor on Monday. The most inflammatory and violent placards have been circulated, calling on the people to assemble in multitudes to show their strength to the ministry, and abusing the Whigs most violently for their Irish Bill, which they call a Reign of Terror. One handbill tried to produce a run upon the savings' banks. Upon this I charged the grand jury yesterday on the subject, explaining the law as to such unlawful assemblies, and cautioning the leaders of the Union that they might make themselves liable to a misdemeanour, and suggesting the impropriety of holding such a meeting during the assizes, as being inconsistent with the calm and peaceable administration of justice ; but stating also, that to peaceful and quiet petitioning the legislature no one would for a moment object, and that as they had selected this period (so improper a one), I trusted that they would have the good sense to be peculiarly on their guard as to exciting the people. This I did in a very temperate but firm way ; and this morning they have announced their intention of giving up their meeting in the open air, and holding one in the Music Hall instead. This is a great relief to us all, as no public disturbance is likely to arise out of a meeting in a private room. This morning the Government sent down a despatch on the subject to the mayor, seeming to be very anxious about it. They are thus reaping the fruits of last year—having then sowed the whirlwind, they are now reaping the storm, and we honest Conservatives are obliged for our own sakes to help them out of the scrape.

At Durham the assize was the heaviest ever known. ' I recommended,' he writes, ' the country gentlemen to inquire

why Northumberland produced so much less crime than their own county. Perhaps, if they inquire, they may be able to find a remedy. *I* believe it is the superiority of the police. Education has apparently nothing to do with it, for more than two-thirds of the criminals at Durham were by no means deficient in that respect.'

Lancaster, March, 1833.

How glad I am to say I am at last arrived at our last place, and that now every day will tell off. But for my waiting here to help my learned brother (Gurney), I should be by this time on my road to the south. I find I try causes very quickly, and yet I hope satisfactorily also. At least I am sure the juries think so, for with them I am a very popular judge, as I always endeavour to bring the case at once to the real point, and always leave that point to them to determine; so that they trust me, as I don't at all infringe on their real privileges and rights. This is the secret of getting on fast, viz., discarding all the fudge and nonsense of the case, and coming to the real point.

In the summer he took the Western Circuit, and the following is from Salisbury, visited now for a third time judicially :—

To-day we have a whole holiday. We are going after breakfast to walk over to Wilton, to see Lord Pembroke's statues and pictures. I have seen them before, but the light to-day will be better for the pictures, and I expect to have much pleasure from them. We had an agreeable dinner with the Bishop of Salisbury on Sunday. His house is charming, situate in a garden, with the cathedral, a most magnificent object in it. He is an agreeable old man, of very mild manners, and full of pleasing scholarship and information.

I am in hopes to-day that the expected collision between the Lords and Commons will not take place. I pray that it may not—and feel strongly assured that God will hear our prayers, and save us from the dangers of internal commotion, if we all earnestly pray for it. Short of our own personal salvation,

there is no blessing which we can pray for, which is probably so real a blessing as peace and good order.

The return to town, after the summer vacation, was marked by the increased illness, and in the commencement of winter, the death of his father, who had for the last three years of his life been prostrated to a very painful degree in mind and body by paralysis.

‘I was not surprised,’ he writes, on the receipt of the intelligence, to his step-mother, ‘at the news of to-day, for I thought when I last saw my father, that it was for the last time I should see him alive. God grant him peace and life eternal, through our Lord and Saviour Jesus Christ. A kinder and more affectionate parent no one can have had than I in the one now lost to me. I can only lament that the latter years of his life have been so clouded over by bodily affliction, and that he cannot have known how much his children have loved and revered him to the last.’

In the following strain, written from Norwich, whither he had gone to attend the funeral, he moralizes upon the so-called ‘poetry’ of death. ‘This afternoon I went to see the body—I should not have known my father again—so changed, so shrunk. It is an awful sight to see the utter clay of death—all that is worth having gone—and what remains may well be called ‘our vile bodies,’ for very vile they do become indeed. It is a poetical fiction, I think, to talk of the beauty or the calm of death. To me there is neither truth or reality in such an idea.’

In March, 1834, Mr. Justice Alderson was transferred into the Court of Exchequer, the result of a pledge given to Lord Lyndhurst at the time of his appointment to the Common Pleas, that if ever his services should be required by him in the former of those courts, he would at

once consent to be shifted thither. This change involved not merely a substitution of one Court for another, but also a great increase of labour, consequent upon the separate equity jurisdiction which was then possessed by the Court of Exchequer, and which was not abolished until seven years later. As Equity Baron, he was entrusted specially with the administration of that branch of the business of the Court, in addition to the ordinary duties of a Common Law Judge, and this onerous post he continued to occupy until the end of Trinity Term, 1841. His decisions, while sitting in that capacity, are reported in the volumes of Young and Collier; and perhaps it is not too much to say that, for clearness and soundness of principle, they have met with the general approval of competent critics. These services called forth, too, on their conclusion, an expression of hearty approbation from one whose eminent position rendered him most competent to judge of them, and the greatness of whose reputation imparted to such a tribute a special value, and the recognition, coming from such a source, of 'the admirable way in which the equity business of the Exchequer had been administered,' was a real satisfaction, although followed by no mark whatever of acknowledgment or approval by the Government of the day, which double duties for a period nearly approaching seven years might not unreasonably be presumed to have merited. But, however sensitive to what he never ceased to regard as a slight, he never allowed his mind to dwell on this or any other disappointment: and, indeed, he found a reward of another and purer kind, in the consciousness of having more than done his duty and been of real service to the public. That this, as applied to him, is no mere empty or unmeaning phrase, is abundantly shown by the conscientious spirit in which, throughout the whole of his

career on the bench, he discharged the duties of his office; and the hearty and unreserved manner in which he habitually placed his time and convenience at the service of the public. 'I strive on circuit,' he writes on one occasion, 'to maintain a character for helping at every place, and being helped at none. The truth is, I like better to work, than that the business of the country should be left undone, and jurors and witnesses detained at heavy expense and great inconvenience.' Such was the principle of his public conduct throughout.

In the spring of 1834 he went the Northern Circuit with Mr. Justice Taunton. The following description of their entry into Lancaster seems almost, in these days of utilitarianism, to belong to a past age:—'We had a most imposing procession to-day. The Sheriff met us on horseback himself, with a *cortège* of eighty persons, all mounted on grey horses. We were placed in a coach drawn by six greys, and seven outriders on greys also—and followed by a second carriage behind; in this way we entered the town.'

Both on this and succeeding circuits, the increased experience with which his new position in the Exchequer furnished him, operated advantageously.

'I find myself,' he writes in the course of this summer, 'well up to my work. My increased business in the Exchequer has done one thing for me, in that I feel more confidence in myself on the circuit, and am not so nervous about my business as I was before.'

In the same letter is mentioned a somewhat unusual, but highly satisfactory proceeding of the court, on the occasion of the trial of a lunacy case at Abingdon, in the course of the Oxford Circuit. This was the adjournment of the court from the Shire Hall to the presence of the alleged lunatic himself.

In the middle of the day [he writes] I proposed to the counsel on both sides that I and the jury with them should adjourn from the court and go and see the man ourselves, and investigate his capacity. This was agreed to, and we went—the view was nearly conclusive. I never saw so clear a case. He did not know his own name or age—could not tell what two and three made—could not count money. I took out of my purse a cornelian which was mixed with my money; and asked him what it was. He took it for a piece of money. I asked him whether he would sign a piece of paper which I had. He said, ‘No—not without Mrs. W—— gives me leave.’ Mrs. W—— is an artful person who has had possession of him, being no relation, and has actually got the poor driveller to leave his estate to her by a will. The interposition of the law to prevent this poor man from being pillaged, and perhaps ill-used, is absolutely necessary. He will now be under the care of the Court of Chancery, and his estate preserved for his heirs-at-law.

* * * * *

‘I wish I could believe that the punishment of death could safely be dispensed with. It is at present practically confined to cases of murder. Whether all cases of murder require it, as for instance, duelling, and the like, is a doubt with me. That is an experiment which I think might safely be made. It is a bad thing to have verdicts continually given in the teeth of the law and the evidence.’ Such was his view, as expressed at a later period of his judicial career before a committee of the House of Commons, when by a legislative enactment the number of crimes to which the penalty of death was affixed, had been materially reduced. That previously to that reduction he should have desired still more strongly to see it restricted within narrower limits would be but natural. It will not therefore appear surprising that few cases should have caused him so much anxiety, in the course of his circuits, as those of incendiarism, unhappily so pre-

valent at this period in many parts of the country. One of this nature coming before him for trial at Devizes in the summer of 1836, he expresses himself as greatly relieved by the receipt of a communication from Lord J. Russell, then Home Secretary, in which he declares his agreement in the view that such cases ought not to be executed, unless there be some danger to human life or human dwellings. To the same minister, in the course of the same circuit, he had recourse for support in a matter of far inferior importance, but which may be deemed deserving of mention as illustrating the strong opinion he entertained of the importance of rigorously preserving the formal respect due to the temporary representative of the sovereign. The Mayor of Bristol, it appears, declined to receive the judge, as had hitherto been the custom, alleging, as a reason for his conduct, that there was in Bristol no Mansion-house. Upon receiving this intimation, Baron Alderson wrote at once to the Home Secretary to complain, and in the meantime demanded back his fiat for the assizes, telling the municipal authorities that he saw no reason for holding any assize at Bristol at all, unless the Corporation received his Majesty's Commission in the usual manner; and that he was determined that with his consent the Commission should not be received with less than the usual respect. This decision in thus promptly recalling the precept had its effect; for a few days later, the Corporation, through their mayor, wrote him a most agreeable letter, putting an end to all dispute, and arranging the matter completely to his satisfaction. 'What a strange freak,' he writes, 'for a *Conservative* corporation to be guilty of.'

The summer of 1838 had been spent at Hampstead, the duties of Vacation Judge making a residence near London desirable. In the beginning of October, however, a move

was made to Cowes, in the Isle of Wight, and here the last month of the Long Vacation was passed in a way almost agreeable to him, as it afforded an opportunity of indulging in his favourite recreation of sailing. The following letter to Mrs. Opie gives some account both of his life and thoughts:—

West Cowes, Oct. 16.

We are rustivating here at this pretty place for my vacation, and have been fortunate enough to take one of the most beautiful marine villas imaginable. It is very large, and fitted up admirably, and with a garden touching the shore. The sea washes part of my domain, and shrubs, &c., grow to the garden edge; roses and myrtles, magnolias, laurels, &c. &c. There is plenty of room for you, if you like to come. The children all enjoy themselves much. I fortunately also met with an old acquaintance, Mr. Beaumont, late M.P. for Northumberland, who has the next villa to mine, and possesses a splendid yacht, 'the last yacht of summer, left sailing alone,' in which he is so good as to take me and mine occasionally, and as we are all excellent sailors, we enjoy it much.

Yesterday I went to see the new Boys' Reformatory, a very pleasing sight, if I could but think it a good thing. It is only preparing at present, and nothing can be better than the arrangements for the care and improvement of the boys sent thither. There are schoolmasters to teach them, and trades to be learnt, and a farm of eighty acres *out of the walls* to be cultivated. All this is excellent; and the boys will be thus well clothed, well fed, and well taught at the public expense. Now, I admit that those who come will probably be reformed thereby, and that is very desirable. But is this the way to prevent crime? Is it not rather to give a premium for committing it? An honest poor man would give much to be allowed to send his son to such a place. The difficulty is to reform, and yet to make a prison a place to be dreaded. Will this do it? I reluctantly confess I think not, unless something more be done in addition to this. I want to see banishment superadded to the imprisonment. If the child were thus separated (after a previous discipline capable of making him a useful colonist), the natural affection of the

parents would make the punishment dreaded by them, and would induce them to try to prevent crime; and the children might be sent, not to a penal settlement, but to Canada, or the Cape of Good Hope, where they might go as apprentices, and prosper, as well as become serviceable to the colonies. But unless this is done, I own I fear that parents will not prevent their children from becoming criminals, in order that they may get a good education at the public expense. Am I right in this? If you think I am, stir up some of your Prison Discipline friends to urge this upon the Government.

The scruples which are expressed in the foregoing letter, arising from a fear lest these establishments should be liable to abuse at the hands of unworthy parents, would seem to have been modified by subsequent experience. At all events, they appear not to have constituted an objection of sufficient gravity to prevent his, at a subsequent period, urging upon grand juries in various parts of the country the propriety of their availing themselves of the provisions of the Reformatory Act, passed for the encouragement of such institutions.

This letter having called forth from the lady addressed a hope that he would carry out his intention of throwing into a pamphlet divers matters connected with the administration of the criminal law, he rejoins by the following:—

At a watering-place, my dear cousin, one has nothing to do but to read and write (ciphering is not necessary), and so I think you need not be so grateful to me for doing what is rather an amusement to myself. ‘Sport to you, but death to me,’ I dare say you must think, though you will be too good-natured to say so. You say I ought to publish my views on various matters. I doubt whether I should do any great good by it. My past experience of the odd crotchets, which, as it seems to me, are prevalent on such subjects, does not lead me to be sanguine in my anticipations of success. The fact is, every one has a nostrum of his own; and so my quack medicine interferes with theirs. I

am quite confident, however, that my views on the Penitentiary here are practically right, and I shall urge them on the Home Secretary. I am shocked to-day to see in the newspapers that the —— magistrates, who have been trying a man for horse stealing (an offence capital a few years ago), have passed on him a sentence of a month's imprisonment, on the *unproved* excuse that he was of weak intellect. If they are guilty of any similar offence, it is clear that they have a similar excuse. This satisfies me that it is necessary to limit punishments *at both ends*; both as to maximum and as to minimum also, because all below the minimum should be grace from the Crown, on one uniform system administered for the whole country, and not dependent on the caprices of the squirearchy, or even of the Judges themselves. If I had tried that man, I should probably have transported him, on the general rule, that where the punishment has been lately mitigated, the extreme ought to be inflicted, to prevent the mitigation from causing the crime to increase. After a time further mitigation may be given, but not at first. I have had several applications through the Home Secretary for my reports in such cases. On stating my reasons, Lord John Russell has agreed with me entirely; thinking it wiser that a few should suffer rather than a general inconvenience take place. And even as to the few, I trust their punishment may, after a certain time, be mitigated, if my policy be successful.

I have been reading the Parliamentary Report of the Inspectors of Prisons. Its fault is that, instead of a report, it is an argument by advocates of one given plan. The plan may be good; but when I see men act as advocates of one particular plan, my experience tells me that they are apt to sink all objections thereto, and only bring forward the bright side. Thus they compare the punishments inflicted in order to enforce the silent system, which of course are numerous; and then they say that the absence of the necessity of such punishments is an advantage to the separate system; whereas they omit the fact that *separation* is the main punishment under the silent system, so that, according to the *silent* advocates, the separate system is one continued punishment. Again, it is admitted that madness is very frequent in the prisons on the separate system; but

then they say it is owing to other independent causes. Query, however, say the opposite side. My advice would be to try it in one prison—let us see an experiment; there is a sufficient quantity of evidence to warrant that. Why try for more? If you are confident of success, this will prove you right. If you are an enthusiast or a jobber, it won't satisfy you; but I don't wish to satisfy such people. Am I right in this? The Report gives an account of the projected Reformatory for boys in the Isle of Wight. I hope and trust it will do good; but they don't satisfy me that it is expedient for the Home Office to superintend all prisons. God forbid, say I to that. Who is the Home Secretary? A man whose place depends on a majority varying (at the present moment) from twenty to twenty-five members; and this seems likely to be so, whichever party is in power. How can he avoid making gaol patronage subservient to party? Instead of adding this to his office, you ought, I think, to take away from his office *all the administration of the law*, and to vest it in a Board, not absolutely irremovable—but, like the Commander-in-Chief, not usually removed by a change of Government. This, however, I cordially agree with—that there will be no really good prison discipline till we adopt the plan of district Penitentiaries. Thus there should be one Penitentiary for a given number of counties, or two or three *common to all prisoners* convicted within the district. Suppose Cambridge, Norfolk, Suffolk, and Essex thus united—Norfolk might have the Penitentiary for men, Suffolk for women, Essex for juvenile offenders male, and Cambridge for ditto, female. Each county ought also to have a gaol for *untried* prisoners. I am clear for applying the separate system to these last. You have no right to subject them to contamination; and the length of imprisonment before trial is not in general sufficient to produce any evil consequence to health of mind or body. And though kept separate, they ought to have *all* indulgences consistent with sound morals and safe custody, if they choose to pay for them—and all reasonable ones, according to some fixed rule, at the public cost.

* * * * *

You were right in believing that her Majesty is not now

troubled with death-warrants. No reports are now laid before the sovereign. It was altered on a young *Queen's* coming to the throne, notwithstanding Miss Martineau and the rights of woman.

* * * * *

I have been reading Wilberforce's Life. One impression given to me by the book is the danger of having even a really good parliamentary hobby. Even the slave-trade was in one sense a snare to him, and induced him I think often to trim his politics, to avoid offending persons whom he thought influential towards abolition. But on the whole, the course of Wilberforce is that of a great and good man. With such as he may I be hereafter, as I should have delighted (from the book) to have been with him here.

Although written at a period somewhat later, the following letter embodies in so definite a shape the suggestions thus thrown out for the improvement of the criminal jurisprudence, so far as regards the mitigation or infliction of judicial sentences, by the substitution of a Board for a single Minister, that it may be appropriately introduced by anticipation :—

I would beg to suggest a larger and preliminary plan for the improvement of the present method of final decision on judicial sentences. This very difficult duty belongs at present peculiarly to the Home Office. I have long thought that this should not be left to the Home Secretary alone ; but that in order to give greater authority, and to insure steadiness of practice, it should be vested in a Board of six eminent persons, of whom the Secretary for the Home Department should be one. To this Board all cases of mitigation of punishment, both from England, Scotland, and *Ireland*, might be referred. And I would add that no execution should ever take place till after the case had been laid before the Board by a report from the presiding judge, who, in England, should also be required to attend with his report. This, you will perceive, is the old system, somewhat altered, of the Recorder's report, extended from Middlesex to

the whole United Kingdom. This, I think, would be an advantageous step towards a proper reform of our criminal jurisprudence, because such a body of eminent persons, having so many cases laid before them, would very soon establish general rules as to punishments, which it would be easy for the Judges to follow, and which (if, on experiment, found to answer) might be embodied afterwards in a legislative enactment—legislation thus *following*, as it ought to do, judicious experiment. Besides, such a body of men would not be likely to be affected by any change of Ministry. The Home Secretary would, it is true, leave them, but the others (not being members of the actual Ministry) would probably remain in office, and so the same definite course of action would be still persevered in. At present, a change of Government makes a considerable difference in a doubtful case in the probability whether a criminal is to be executed or not.

Nor would Parliamentary interest, nor the suggested influence in Ireland of the priesthood, have any weight with such a body. Indeed, I think the removal of these questions from the provincial atmosphere of Ireland would be a peculiar benefit derivable from this plan. The body I should suggest would consist of the Lord Chancellor, the Lord Chief Justice, the Home Secretary, the Secretary for Ireland, and two other Privy Councillors to be named by the Crown.

To such a body also all proposed legislative measures relating to the Criminal Law might be conveniently referred, as to a committee, to advise the Crown thereon.

I am not aware that this requires any Act of Parliament. It may be done by the proper authority of the Crown itself. It would only be necessary in capital cases for the Judges to direct specially the executions to take place on some one given day—say the last day of Michaelmas Term—after the Summer, and the last day of Trinity Term, after the Spring Circuit. The Board might then meet to consider these cases on some day before Michaelmas, and on some day before Trinity Term.

One incidental good effect from all executions taking place on a given day might be produced by directing that throughout

England, Scotland, and Ireland, the clergy of the Established Churches should read over to the respective congregations the names of the criminals, on the Sunday prior to the day of execution, and that a solemn prayer should be prepared for that occasion. This should be a general notification to all, and would make the most of the sad example. * * *

In November he returned to London, and the resumption of his judicial duties. The Chartist agitation, as the winter advanced, awakened considerable apprehensions in the minds of the friends of order, to which he alludes in the following letter, written to Mrs. Opie in the course of the Christmas vacation :—

I think Miss M—— only speaks what she wishes in announcing a revolution as at hand, but I am not prepared to say that it is so far off as I could wish. We have no government, at least no governing on fixed principles, which gives great strength to the movement, because no one can tell at any moment that the Ministry may not join it. And so we are continually in hazard of being run away with by that unruly horse, the mob. God preserve us—for he can—and in the meantime I persuade myself that whatever happens is by his permission, and is for the best to those who trust him.

* * * * *

I was struck to-day with a passage in St. John's Gospel, ch. 17, which little —— was reading to me. 'And, now Father, glorify me with the glory *which I had with thee before the world was.*' How can this be explained on the Unitarian hypothesis? If Christ, *who says this*, were merely Man, what glory could *he* have had before the world was? It is odd that this never struck me before, if indeed that be odd, when, to say the truth, the more often one reads, the more new and striking thoughts occur. A thing peculiar to the Bible, which with me is a strong internal proof of its inspiration, just as much as the fact of the pores of a flower or a tree remaining symmetrical under the most powerful microscope, equally as under the least powerful, proves that they are the workmanship of God. Try the finest lace, and you

will see the difference between God's work and man's most perfect attempts at it. In a powerful microscope you see sad want of symmetry, which the naked eye cannot detect. So it is in God's written word: the more you investigate, the more perfect does it appear. You find continually new beauties, no imperfections. Man's thoughts and works, on the other hand, however profound, are, if once understood, completely understood. So much for my sermon.

Again, at a later period, in answer to a letter of Mrs. Opie, in which she had dwelt on the distress and evils then prevalent in Norwich, the still unquiet state of the country appears to have suggested much of the following:—

I entirely agree with your view of a republic. As long as men are so wicked, it is an impossibility for it to be a lasting government, for it does not govern, but obey. America is no exception to this rule. In the first place, at its commencement, I believe it was a remarkably moral population; and so the evils would not at first appear. And since that time, the immensity of its territory has enabled its most active and least self-restrained population to expand itself with less inconvenience. But will the thing last? When the wilderness is peopled, will not the wickedness, which is now expended on the Indians and the weak without observation, become intolerable, and a government strong enough to protect be the result? Such a one I think will hardly be a republic, but, I fear, a despotism, for men always run into extremes. Lynch Law is in fact an ill-regulated despotism. * * * * * *

I am sorry for your state at Norwich, but I cannot help thinking that what you say of the wickedness there is the cause of the great distress. The more I think, and the longer I live, the stronger does the conviction become that godliness has the promise of both worlds; and that it generally (but not always, of course, for then there would be no exercise of faith) produces temporal comforts as well as spiritual life. The evils we labour under in England would be cured almost, if we could devise a plan whereby the great and increasing wealth of this country could be well and properly distributed. At present the tendency is

for the rich to grow more rich, and the poor to become more poor ; arising from the wicked idolatry of wealth on the part of the former, and the profligacy and improvidence of the latter. No distribution such as the Chartists or Socialists propose, by force, would remedy this ; for the causes would remain, and the only effect of their scheme would be a paralysing of industry by rendering property insecure ; and so rendering *the aggregate* to be distributed less. But religion, which directs us to respect and protect our neighbour's property as our own, and yet commands the rich to be willing to give and apt to distribute, while at the same time it charges the poor to be sober, temperate, and industrious, and all (rich and poor) to be holy and love God, living as in his sight continually, is the only and the perfect remedy for all. By religion I mean Christianity ; for none other that I know of ever did this, or ever will do it. Then arises *the question*, how, humanly speaking, are we to promote this great end ? No doubt we can do nothing without the spirit of God, but still He condescends to use the instrumentality of Man. This makes me a Churchman, and you a Friend. Each of us, I presume, has the same object, but conceding to *you* the advantage which I doubt not *you* individually feel (and that in common with highly-educated and spiritualized minds) from the silent worship of which you speak, I own I cannot bring myself to think that it would be at all suitable to the bulk of mankind, for whom we are to provide. The mass, if they could sit silent (which I doubt), would be thinking of their farms, or merchandize, or gains, or pleasures, or sins. Believe me, your worship, *for the bulk of the people*, is an impossibility, and that, as it seems to me, shows that it is defective. Whereas the social worship of the Church is calculated for every one. What our Church wants, I think, is a more free outlet for zealous and enthusiastic spirits. They are immediately branded as heterodox, and driven out. I would, if I had the government, try and moderate them, but I would direct them also, if I could, to be enthusiastic, and Churchmen. Let them have their services, &c., all these things can injure no one, may do good to many. But the fact is, their strictness offends the lukewarm, and it is easier to say heterodox than to imitate their zeal and real merits. I think we might have kept

the founders of your body in our Church *at first*, if we had had this true catholic spirit. They were men seeking spiritual things. I believe they might have found them *in* the true Church catholic; but I agree that they did not find them as it then was; and so they left it, and went further than I think was right, though the light which they followed was of God in its beginning. Again, I am *sure* that we might have kept the Wesleyan body. But no doubt all these things are for the best as they are, and will all end in the greater spread of Gospel Truth. 'The wrath of man worketh the righteousness of God'—a glorious belief. * * * * *

The collision into which, on the question of parliamentary privilege, the Courts of Law and the House of Commons were brought towards the commencement of the present reign, directed the attention of constitutional lawyers, and, indeed, the profession generally, to this important subject.

Upon this question he expresses himself to the following effect:—

There is no such power in England as an absolute power, with the exception of the legislature itself; all other bodies or persons derive their authority from the law, and are under it. They are not of themselves able to make law, nor can they, consequently, *increase* their own authority, for that would be to make law. But this is quite consistent with their having in many things a discretionary power—or even a limited legislative authority. Whether they have such power or authority is a mere question of fact. If given by express statute, it may, perhaps, be called a question of law: and the statute must be construed by those to whom the constitution entrusts such questions—viz., the judicial body. If there be no statute, the question of fact must be determined either by universal and immemorial usage, which is the common law, and is taken notice of by the judges without special proof, and the evidence of this is the traditional course of decisions found in the books of Reports and ancient treatises by learned men in former times.

Or if the usage be not universal, it is for the jury who will hear the evidence applicable to any particular or local custom to decide whether it exists or not. Now the privileges of parliament (not regulated by actual statutes as some of them, *e.g.*, privilege from arrest) are universal, and are in truth part of the common law, if they exist at all. If, therefore, Lord Coke's observation as to them were true, which it is not, that they were '*ab omnibus incognita*,' it would follow that they did not exist. It is because they are '*ab omnibus cognita*,' that they do exist. The proof in these cases is that—First, they have been constantly and openly exercised and acquiesced in; and secondly, the course of decisions shows that the courts have from time immemorial recognised their power of committal for contempt, and that, like as this power is exercised by all courts or bodies who have it, the power is exercised by Parliament. All such bodies exercise the sole right of deciding upon contempts. It is a mere mistake to say that they are in any other sense judges of their own privileges. They have no power to create a new privilege—*e.g.*, that by order of the House the serjeant-at-arms might put a man to death—for there is no immemorial usage, nor course of decisions to that effect. But it may be well contended that within certain limits they have the power of deciding at their discretion what their privileges are—and that in that respect, and within those limits, they have a *quasi* legislative power. Those limits seem to me to be fixed by the consideration of what powers are necessary to fulfil all the duties with which they are entrusted. All such powers they have, and everything is a contempt which interferes with the due exercise of them. And, as before stated, they, like all other courts, must alone determine what acts of others do interfere with the due exercise of their powers. This is then the limit, and these are the foundations on which privilege of Parliament stands.

The Bill introduced by Lord John Russell in the session of 1841, for the substitution of the punishments of transportation and imprisonment for that of death in certain specified cases, met with his cordial approval. He was

even inclined to go further, and extend that substitution to certain other cases, held in law to be cases of murder, and liable to death. His views with reference to this subject are embodied in the following letter to the then Home Secretary, Lord Normanby :—

March 29, 1841.

MY LORD,

In consequence of the conversation I had with you last night, I take the liberty of sending you some suggestions which have occurred to me for the further mitigation of the criminal law, not at present included in the Bill introduced by Lord John Russell, but which appear to me in full accordance with its spirit and intent.

It has always appeared to me in the highest degree surprising that legislators, taking an enlarged view of our criminal jurisprudence, and expressing their intentions to mitigate its severity, should have uniformly almost made an exception in the case of murder. This can only be owing to their considering murder in its popular sense ; in which case it would be difficult not to agree that it is reasonable to continue the punishment of death within more narrow limits, and to make it bear some nearer relation to the atrocity and danger to the state of the crimes to which it is to continue annexed. We do not act like rational men or scientific legislators if we leave murder as it is, and do not seek to sever some of those offences from the general class, and to annex to these a lower scale of punishment. I have made this attempt, and now submit it to your lordship's consideration, in the hope that it may give you some materials for thinking on this important subject, and that the result may be that these ideas of mine may either be carried into effect, or may cause a better plan to be suggested by others.

I am not prepared to define that species of murder which alone ought to be punishable with death. It is a task at present out of my power, and would require probably the united perspicacity of many minds in order to accomplish it satisfactorily. What *is* in my power is to select some cases (at present murder, and liable to death) which I think may reasonably cease

to be so, and I believe this will be found to be the only prudent course for the legislature to adopt. I subjoin the four cases to which my attention has as yet been confined, and a few short reasons for each suggestion.

1st. Death designedly inflicted in the course of mutual combat; voluntarily engaged in by both parties, to be manslaughter.

I need scarcely assign reasons for this. It is obvious that death is not a proper punishment in such cases. The party killed is a voluntary agent, and there is not any reason to protect, by so high a penalty, the life of a person who declines to protect himself. Besides, juries hardly ever will convict; so that the penalty produces impunity.

2nd. Death designedly inflicted on a new-born infant by a mother at the time of delivery, or immediately after, she being delivered alone and in secret.

These cases are almost always acquitted, and the prisoner convicted of concealment of the birth. The woman is then subject to two years' imprisonment only. But I have seen and have tried cases in which no moral, and but little legal doubt of the full guilt existed, and which were acquitted only on the ground of the punishment. I myself, however, in case of conviction, should not hesitate to recommend mercy; but it would be far better to make this murder transportable for life.

3rd. Death designedly inflicted after, and in consequence of, the irritation produced by provocation, arising out of words imputing an indictable offence.

No provocation by words only at present reduces the offence from murder to manslaughter; yet it would be difficult to contend that an accusation of an offence unjustly made may not reasonably produce as much irritation as a blow. I have, however, confined it to 'words imputing an indictable offence,' in order to avoid introducing too much vagueness in this alteration.

4th.—Death inflicted not designedly as to the individual killed, but under circumstances of gross negligence, such as that general malice is to be inferred.

If a man throw a brick into a crowd, or the like, it is murder if death ensue. I think in this case, however, that a more mitigated punishment would be effective.

After all, it is very dubious whether, on a conclusion drawn from such premises, you are right. Great rashness and want of thought will often be confounded with general malice by a jury. The verdict on a late coroner's inquest against an engine-driver shows this in a very clear manner.

These are the cases to which I have wished to draw your lordship's attention, and that of Lord John Russell, in case you think them worthy of being laid before him.

Believe me to remain,

Your lordship's obedient servant,

E. H. ALDERSON.

The following letter, in which the political questions of the day are touched upon, was written to a distinguished member of the American bar, in acknowledgment of a book which he had recently transmitted to England for his acceptance :—

London, May, 1841.

Your book has arrived safely at this place, fortunately, not having been sent by the *President*, of whose arrival we now seem to despair altogether. I have not yet had an opportunity for reading it, but pray accept my thanks for your kind remembrance of me and mine when the Atlantic has been rolling between us. Pray do me the favour also, in case you see Mr. Justice Story, to present my best compliments, and thanks for his valuable book on 'International Law;' the new edition of which he has been so good as to send to me. I shall be very glad if he be persuaded to accept the mission to England, as you suggest is likely to be the case. It is of great importance that the questions raised between us should speedily and amicably be adjusted; and under his auspices I shall have good hope that it will be so. In truth, with candid and just men to settle them, they do not appear to me to present much of difficulty. The boundary question is a mere question of fact, and if, after a long lapse of time, the fact is difficult to be exactly ascertained, it should be ascertained *cy-près*, and declared for the future. An impartial umpire should be, if necessary, resorted to; or a boundary-line made a subject of fresh negotiations. I rather think there is quite enough land for both *at present*. I suppose, how-

ever, your countrymen look to the future, and your future, on such subjects, is, I know, marvellously near to the present. You go from the wilderness to the crowded city at railway speed. However, I hope and trust we shall get through this dispute (the Maine boundary question) like two rational nations, who dread war, not because they are cowards, but because they are Christians.

You seem to me to require some improvement in your territorial relations with neighbouring states. As peace and war are in the care of your general executive, it appears to me that the borders of your country should be *Congress ground*; for otherwise you are constantly at the hazard of disputes. Maine, for instance, might now involve the United States in a war for her own local quarrels. It is of great importance that *nations* should adjoin each other. But in your case a nation is on one side, and on yours a sovereign state, which is not the nation, nor can be ruled by the law of the nation absolutely as to the settlement of any dispute. A belt of *Congress ground* round your territory would make you more agreeable neighbours. I dare say you will laugh at my speculation for improving you. I may speculate, but the world will go on just as before, neither better nor worse.

We seem in England to be in a ministerial crisis, as it is called; the Whigs are fairly beaten, but won't go out; and, to save themselves, are trying a free-trade agitation, and propose to repeal the sliding duty, and substitute a fixed duty on corn. They have no chance of carrying anything with this Parliament, so I suppose it will end in a dissolution. The Conservatives are very sanguine of gaining by such an event, but are angry that it should be resorted to, as it will fill the few Treasury boroughs with Whigs in the new Parliament, and so strengthen the latter, when in opposition, as the Conservatives say, unfairly. So much for our English politics. As far as I am concerned, I am a quiet spectator, having the privilege of not personally interfering in such matters. 'Suave mari magno, &c. ;' and as to the future, we are under the care of a good Providence, who will, I doubt not, if we are to suffer evil, bring good out of it ultimately.

In the autumn of the year 1842 it fell to him to be again selected; this time in conjunction with the late Lord

Abinger and Mr. Justice Cresswell; for the service of a special commission, for the trial of the Chartists at Liverpool and Chester. Thither, accordingly, he proceeded upon his return from a short continental tour; but found, after all, as he writes to one of his sons, 'no very serious cases.'

The worst (he continues), was one of conspiracy on the part of the Chartists to compel all people to leave work until they got the charter. A very foolish scheme; but not without danger to the country. The conspiracy, it is said, was organized in eight counties. We are to hear more of it at this place (Liverpool), and to see more of its extent when Mr. Feargus O'Connor and the Manchester delegates are put on their trial. It is, however, doubtful whether they will not put off this trial. *
* * The other cases at Chester were principally of people for stopping the factories, and of persons who took advantage of the riots to plunder their neighbours. But there was not much plunder, which is to the credit of the mob. The men seem to me to be all very young and very ignorant. We have about 200 for trial here. * * * * *

I went yesterday afternoon to see the ruins of the great fire, which burnt down about twenty or thirty warehouses a week ago. The fire must have been indeed terrific. These tall buildings were full of cotton, turpentine, oil, and such things. One of them was an iron warehouse, full of bars of that metal. It is curious to see how the iron has melted and mixed up with burnt bricks and other substances, and run into all manner of fantastic shapes. In one place I saw lumps of white substance, which, when I took them up, were like lumps of chalk. These were the remains of barrels of flour. In another half-burnt bales of cotton lay piled up. It was like a ruined town after a bombardment. The loss is stated to be about 400,000*l*. A large sum, but it falls principally on the different insurance offices.

The summers of the decade of years intervening between 1840-1850 were spent, with only one exception, at Lowestoft, in Suffolk, and will long be remembered in the circle

of the relatives and friends who were permitted to take share in them, as seasons around which some of the tenderest associations will cling. If, in adverting to them, the strict order of time is abandoned, and they are made the subject here of one collective mention, it is because, with some slight modification of circumstances, in substance each successive one closely resembled the preceding. In all, the main figure was, and in retrospect remains, the father of the family; not only because around him centres, as from him personally it was mainly derived, an amount of unclouded happiness—shed over a period of years longer than that usually permitted to a large family circle without break or severance—but also because in no other relation of life did he habitually so exert himself—if indeed that can be called an exertion which constituted his own chief happiness—to attract, interest, and amuse. That this should have been so—that, even to a fault, as some might think who entertain a strong opinion of the claims of society, he should have reserved for home the best of his thoughts and conversation, is an indication as well of the strength of that affection which sought to minister to the daily enjoyment of its more immediate objects, as of the unaffected truth and simplicity of his character. To this may be attributed the unusual space, so to say, which he occupied in the every-day life of his family circle; and hence his image is intermingled with the past by a double thread of association. He may be recalled as the delightful companion, no less than as the revered parent, as the promoter of pleasure hours no less than as the counsellor of serious, by his witty sayings, as well as by his deep earnest thoughts. Never was this more experienced than during the series of summers to which allusion has been made. Full of life and spirits, and blessed with the enjoyment of health, to which a severe and prolonged illness in

1843 seemed to have imparted new vigour, he did not need to look far for the amusement of his hours of vacation. Material for this was readily found within a small compass, in the interests of home, in the letters of friends, in his own multifarious reading, in the associations of the place, and the details of its gradual development ; in the thousand trifles of every-day life, from which amusement is derived by a mind endowed with the happy instinct of being easily pleased, but which seem to elude description, in proportion as they the more vividly individualize. Fixed or regular pursuits he had none : his labours finished, nothing was really wanting to his happiness beyond the companionship of his immediate family circle. And yet, from the heated atmosphere of assize courts or chambers in town to the pure air of the German Ocean was of itself a most delectable transition, and one as keenly relished in each instance as it was eagerly anticipated ; especially when, as in 1848, instead of going any circuit, he was kept, by his duties as Vacation Judge, in London until the beginning of September, when his escape to the seaside is joyously commemorated in the following lines, in which the transition from gay to grave, it may be observed in passing, is eminently characteristic :—

My holidays, my holidays !

'Tis over, and now I am free

From the sharp attorney's tricky ways,

And the clerk's chicanery ;

And the subtle draughtsman's tangled maze,

As he weaves the vacation plea.

My holidays, my holidays !

Now cometh the tranquil night,

And the twilight walk, and the upward gaze,

At those distant orbs so bright ;

While the swelling wave 'mid the pebbles plays,

And breaks with a gleam of light.

My holidays, my holidays !
O, will the time ever come,
When, freed from this world and its weary ways,
And its trifles light as the foam,
'Midst welcomes of joy and songs of praise,
I may reach my real home ?

There was his garden, too, with its terrace-walk touching the very beach itself, where he could stand in the bright sunny mornings, and count by hundreds the colliers as they raced northwards, and match one against another, till they rounded the most easterly point of England, and disappeared from view. There was the new harbour too, then in process of construction, with its various mechanical contrivances, its machinery for pile-driving and lowering stones ; and many a morning was pleasantly, and not unprofitably, wiled away in watching the operations, and gleaning information upon matters connected with practical science, of which his knowledge was considerable. How readily, at other times, would he suggest, what of all modes of recreation gave him most delight—a sail along the coast to Southwold, or a river excursion up the Waveney and the Broads, as they are called, into which the river widens before reaching the sea ; and with what zest and eagerness, on such occasions, would he enter into the enjoyment of the moment, and turn even that to account, questioning the sailors with interest upon matters to which the incidents of the day gave rise—their habits of life, the course of the currents and channels, the position of the sand-banks, the best fishing grounds, or the best methods of navigation. Yarmouth, as the place of his birth and early education, was endeared to him by many associations of the past, and was each year the object of frequent visits while he continued a resident in its neighbourhood. It was with deep interest that he loved to

point out to his children the house where he first drew breath, and the school which he first attended, an urchin too young to be trusted by his careful governess to cross the ferry of the Yare alone, or the old jetty, from which in his early days he had watched the return of more than one Baltic fleet of the old war, and which, through an inadvertency in saluting, he remembered on one occasion to have narrowly escaped being swept by a cannon-ball, to the consternation of the assembled townsfolk. On two occasions, at this period of his life, his interest in Yarmouth was specially evinced, in connection with objects of great parochial importance. The first of these was the re-opening, in 1848, of the Church of St. Nicholas in its present magnificent state of restoration, when he brought with him to the ceremony an illustrious exile, in the person of M. Guizot, who happened to be visiting Lowestoft at the time. The second was the inauguration of the National Schools adjoining the Parish Church, when he rejoiced to be able to testify, by his presence, to the deep interest which he took, not merely in the locality itself, but in the cause of religious education, which lay much at his heart.

And if a change of scene was desired, it was not unfrequently obtained by an improvised excursion to some part of the Continent. The suddenness of the thing gave it half its charm; and in this way Holland, Belgium, and parts of France and Germany, were in turn the objects of brief but delightful visits, around which will cling many associations mirthful and sober.

But perhaps it was from another source that his truest enjoyment was derived. This he may be said to have pre-eminently found in the drawing around him a circle of near relatives and attached friends, and the agreeable and affectionate intercourse so engendered. Society of this

kind—intimate and unrestrained—to which, however joyous and light-hearted the spirit infused into it by a preponderance of youth, his presence ever gave an intellectual tone, and when the grave argument of law or theology mingled, as often as not, with interests and topics more congenial to the young—and both were entered into by him with equal zest—the company, too, from time to time, of many whose talents and conversation shed an additional charm over the charmed circle of a large and united family, constituted in his eyes a pleasure of the highest and purest order. Other friends there were in the humbler walks of life who formed a great interest of these times of comparative leisure, and in contact with whom it often chanced that he was brought, by the suffering and distress which were no unfrequent visitants among a seafaring population, where the casualties of shipwreck and accident were abundant.

One old habit—the nursling of Scarning and Bury—the unguarded hours of the long vacation were often wont to re-awaken. While Law slept, the Muse returned with all the strength and attraction of former years—fired, it might be, at the sight of an Eton holiday task, or by a challenge to a classical translation. And many a time, when friends were gone, and the autumn days began to close in, would he wander over the Denes, or along the shore—*musam meditans*—Horace in hand, engaged in the work of adapting or translating into gay or serious, as the mood might be.

Something of the latter tone predominates in the following lines, which will be recognised by the student of Horace as an adaptation of the 11th Ode of the first book—‘*Tu ne quæsieris*’—and were written in the autumn of 1850, at the close of the last of these much-cherished summers :—

Seek not to know, my dearest wife,
Of you or me, the term of life :

It is a sinful thing to try :
Nor rashly tempt in magic numbers,
Rousing the future from its slumbers,
The doubtful powers of prophecy.

'Tis better far, whate'er betide,
Patient to suffer and abide ;

Whether this year our last shall be ;
Or other summers still be found,
To greet us where the Eastern bound
Of England breasts the German Sea.

Be wise in time—enjoy the hour—
Let the short space of life have power ;
T' include an age within it—
E'en while we speak, our time is flying,
Haste, let not one that's daily dying
Trust to a future minute.

Thus were the intervals of leisure passed, until the approach of Michaelmas Term and the opening of the courts recalled him to town. The return to his official duties, so far from being distasteful, was welcomed as a subject for rejoicing. 'The time for work draws nigh,' he says, writing to a friend, shortly before one such occasion. 'I do not think that I should be happy as an idle man.'

The following are extracts from letters written on different occasions during the summers of this period. They may serve to indicate still further the manner in which some of his vacation hours were passed. Mrs. Opie had been reading Miss Bremer's 'Home,' and inquiring his opinion as to its merits :—

I agree with you about 'Home,' and think that a really delicate woman, as Eliza is represented, would have shrunk from marrying her daughter to a man who had professed love to herself—a married woman and mother—or at least would not

have merely recommended a transfer of affections. But I suppose habits and manuers (may I not say the moral sense) varies in different countries so much as to make me a bad judge of these things. The end, Eva's marriage to the old ugly doctor, is very Germanish. 'Our eldest' should have been a general shopkeeper's wife; and the *Berserkers* soundly whipped and sent to bed. So much for 'Home, sweet Home.' * *

We have been in great anxiety about poor young C—'s wife. I feel much for the husband and mother. We are expecting the vicar back to-morrow. It seems unfortunate that he was away when two such awful events, as the death of the poor sailor on the beach, and this threatening calamity over his nephew, happened.

* * * * *

Yesterday we went by sea to Kessingland, where our old friend with the curiosities lives. The wind was rather fresh as we came back. M—— was in a great fright, and wished to be landed. You would have laughed at her alarm, for there was really no sort of danger. To-day I have been to see Mr. B——'s camera obscura. The effect was really beautiful. The sea sparkled in the sun, and the waves moved, dashing themselves on the shore. The ships sailed on, and a steamer came by whilst we were looking at it. I was quite as much pleased at it as the children. M—— was quite astonished to see a moving picture, and very much delighted when I sent the boys down to jump about on the grass bank, which we saw them in the picture doing. I think this part of the exhibition pleased the most. But *I* liked the sparkling sun, shiny sea, and the moving ships far better. * * * * *

Mrs. C—— is quite well again, and went out on a sketching expedition with the children last Monday. I am to start next week for Ipswich, where I mean to meet R——, and perhaps we shall go to see his new living at Kirton, and fix on a spot to build his new parsonage-house upon. Yesterday S—— (an old servant) left in the steam-boat for town. To our amusement, she would not receive her quarter's wages, for fear she should be lost *with the money in her pocket*, which she evidently thought would be a shocking addition to the calamity of being drowned.

What an odd fancy. Mr. R—— has been presented to a living, and is to preach a farewell sermon here next Sunday. Every one seems very sorry to part with him. * * *

Again, at a later period of the year, on his return from visiting Paris, he writes as follows :—

We had a most agreeable trip abroad, accidentally hitting on the same hotel as the T——'s, and so made a pleasant party together. Luckily we saw Mademoiselle Rachel in Phèdre, and a good comic actress in one of the *old* petites comédies (of Mari-vaux, I think), I have forgotten the lady's name. Paris is improved since I saw it nineteen years ago. I called on, and saw Guizot. But Madame de Staël, unluckily for me, had left Paris, so I lost my flirtation there. We were great cons (as the boys say) in London two years ago. I went for the first time to Versailles. I never saw a real palace before. Certainly Louis Quatorze was a prince of upholsterers and architects. * *

The following is an extract from a letter to one of his sons :—

We go on much as usual. Your boat still swims, I hope, if still on Mutford Broads. You heard, I conclude, of its being made into a diving-bell and ascertaining the exact depth of the water.

—— is half ruined by the expenditure of her capital in weighing it up again. I have been amusing myself with writing translation of Horace adapted to present times. * *

You will be glad to hear that Captain A—— says he proposes to buy one of the fishing boats on the shore, and put it into order, so as to make a capital yacht of it for my use next year. We can easily get a crew among the beachmen when wanted. This sounds well. * * * *

Those who have seen in these pages with what interest he had in early life watched the progress in education of a sister and a brother, will easily conceive that, as a father, he should in this respect exhibit a still more tender solicitude. That it extended to something far beyond mere intellectual development, may be gathered from the tenor

of the following letter, addressed to one of his sons, almost at the commencement of his school career :—

I will sit down and write to you to-night before I go to bed, that I may talk with my darling boy in imagination at least, though I cannot see his dear face. I was very sorry to part with you last Wednesday, but as it is for your good, I submit to it, and your letter to-day makes me sure you will be happy in your new mode of life very soon. It must seem at first strange to you, and you will often think of home. I should be sorry that you did not, but in a little while, if you are a good boy, and I feel sure you will be so, you will find school a happy place. Mr. — says you are diligent and obliging. That gives me great pleasure, for I set much more store by diligence than by what people call talent or genius. A diligent boy is sure to do well, and if to it he adds talent, he does excellently. But the merit is in making a good use of the talent entrusted to you. If the servant in the Gospel had had ten talents instead of one, and had hid them in a napkin, his lord would have equally thought him unworthy of reward. It was the *diligent* servant who was rewarded.

I shall be very glad, if, when you write to me, you will tell me how you spend your time, and what lessons you are learning, what companions you have, which of them you like best, what games you play at, and all such like things. There is plenty of subject for a long letter, and such things give delight to one who loves you as I do. A letter should be all about oneself, and one's own thoughts, and should be just as if you were sitting down to talk to me. I think of you every day, morning and evening in particular, and please myself in thinking that when papa and mamma are praying for their dear boy, he may be doing so too for them. There is a story of two lovers who agreed at the same hour to go and look at the moon every moonlight night, and that was a tie between them, for they felt then as if they were together. How much better is it to be looking, not to the thing created, but to God himself. That is indeed to be together really, to be praying all of us at once to him, is to be as it were united through Him for ever, and to make a beginning of heaven

on earth. My own dear boy will remember this, and we shall not be separated then, but every day be together in spirit if not in bodily presence.

Well now, I have done with my serious talk. So it only wants twelve weeks to the holidays? Well, you will find the time pass very fast, I dare say. I find it pass with me very quickly, but then I am older than you, and look more backward than forward in life, as my days are nearer at an end than yours. But I shall long to see you again, and hope to come down before the twelve weeks of the Half are over, and pay you a visit. If I go the Home Circuit, I shall come round on my way to Hertford, and carry you off with me perhaps to that place, and I can drop you again on my way back to town. I have been obliged at last to send for Sir Benjamin Brodie to see me for my sciatica, and to-day, by his order, I have been stewed alive in a vapour bath. Dreadfully hot, I can tell you, 140 degrees, while a hot bath is only 98 degrees. Yet it was not unpleasant after all; for *hot air* does not burn like hot water, as it communicates its heat gradually to you, air being what they call a bad conductor of heat. So by the time the hot air makes you warm, a perspiration breaks out, and cools you again. People have been known to bear 400 degrees of heat without much inconvenience. Sir Francis Chantrey told me once he had gone into the oven where he baked his moulds, which is heated by a nearly red-hot plate at the bottom. He wore thick wooden shoes to protect his feet, and a flannel dress, and was able to bear it very well. That was a heat that would have baked a pie, and yet a man *alive* would not be heated much above blood heat, or about 100 degrees. Is not this curious? Life is able you see to bear heat which would roast a *dead* body. So it was with me to-day. I was not so very hot, because I perspired so profusely; but that was just what was to do me good, and I think I am already better for it. Well, I believe I have written my sheet out. * * * * *

The following is a letter written shortly after the foregoing, and addressed to the same person:—

I was very glad to get your letter containing your own account

of your studies, and what you liked best. I think when you get a little forwarder, you will like Greek better than Latin : and what is more, you will find that though boys generally begin with Latin, Greek is the easier language of the two. I believe they begin with Latin only because it used to be the common language of literature through all Europe ; and so Greek books were at first explained in Latin, as indeed is the case now with most of our grammars and lexicons ; but when the time arrives—and it is rapidly approaching—for Greek grammars and lexicons to be written in Greek and English, I should not be surprised if boys were to learn Greek first. I think you will also find Greek books much more amusing. There are two which you will soon get to, I dare say. One is the history of the education of the great Cyrus : and the other the history of the retreat of the ten thousand Greek soldiers out of Persia. They are more amusing than most novels ; and they are both true stories. My little historian will be very glad to read them, I am sure. * *

I am as glad as you are that the frost is gone, and I hope we shall see no more of it this spring. You will soon at H—— begin to see the spring flowers, which I always used to think were the most beautiful. In the woods near you I dare say you will find the wild hyacinth, and my favourite, the wood anemone—a very elegant white flower. Do look for it. The orchis tribe is also very beautiful ; some of them you will easily know by their blue flowers and green broadish leaves, *spotted with black*. It is a great additional pleasure to observe such things when you are in the country ; and if you intend to be a clergyman, and live there, you will find observing flowers, and insects, and birds, their habits and manners, to be one of the most innocent and lasting recreations of a country life. Only a *recreation*, though, it must be ; remember that. The duty of such a life is far higher, and of greater importance. It is to be God's ambassador—the highest post on earth, *if properly discharged*, and with a single eye to his glory and honour. But as man is composed of both body and soul, God mercifully provides for both. The duties relate to the soul, the recreations to the body : and both are necessary. Only let the latter be innocent, and, if possible, useful, too. Such as I have suggested to you are both.

They are useful, by making us see God in all the works of his beautiful creation, which, the more you see them, the more perfect you find them. Do you recollect the microscope at the Polytechnic Institution? Well, if you do, you will remember, I dare say, seeing some fine manufactured substance magnified. That was man's work; and though to our common eyes it seemed even and perfect enough, yet when magnified, it looked all irregular and rough. But now try God's work—take some of his network, as the pores of a piece of wood through which the sap or juice ascends. The utmost magnifying power only makes them larger, but can detect no imperfection. Now I think this gives one a lively, though no doubt still a very inadequate, idea of God's perfections, and so all other observations of the sort do. His power is quite as much to be seen in the dust of the flower, or in the minutest insect, as it is by the discovery of mighty worlds in the space of the heavens rolling onwards amid the stars: and, indeed, more so, for the smaller things are more level to our comprehension and understanding; they do not bewilder our imaginations, like the thoughts of the stars. I wish, therefore, my dear boy to cultivate this observing faculty as he walks in the fields. He may learn thus, whilst he is at play, what is even more useful than what he learns at school. Remember the story of Eyes and No Eyes. * * * *

In the following lines he is still further shown in the same capacity. As an expression of feeling, they will be probably read with interest:—

To Little —,
(On her Second Birthday.)

Sweet is the fragrance of the morning hour,
Sweet is the sun's first radiance, sweet the year,
In the spring's early promise, sweet the flower,
Seen in its buds, ere yet its leaves appear—
But sweeter far, my angel babe, to me
Is that blue eye that speaks thy opening mind,
That beams with new quick thoughts, yet undefined,
That tell of what is now and what may be.

O may the God who taught us that, like thee,
 We should be pure and spotless, bless thee still ;
 Lay on thy infant head his hand, to free
 Thine heart from sin, and form thee to his will,
 Cleanse thee from aught that's evil or defiled,
 And keep thee as thou art, my darling child.

*Lines written in a Prayer-Book given to — on the Birthday
 before her Confirmation.*

Dear child, ere yet that covenant is renewed,
 Which those who loved thee dearly made for thee,
 When thou wast grafted in the heavenly tree
 Of Christ himself—then first with life endued,—
 Thy father brings to thee a precious gift—
 This little book with holy counsels fraught,
 With humble prayers, by saints and martyrs taught,
 And hymns sublime, that can the soul uplift
 Heavenward from earth. O in this sceptic age,
 If aught of doubt perplex thy simple mind,
 Here turn for refuge, here thy soul shall find
 A safe, sure home. So 'midst the flood's wild rage
 The wandering dove, with flagging wings distressed,
 Perched on the ark at length, and found her rest.

The first paragraph of the following—appropriately addressed to 'a Friend'—was called forth by an occurrence on one of his circuits, namely, the refusal on the part of a young woman not a Quaker, or other privileged person, after being subpoenaed as a witness, to take the oath required as the preliminary to her giving evidence. To such cases he desired to give relief by a general enactment. Without going so far as to consider, as many eminent men have done, the scruple about swearing in a court of justice entitled, on account of the language of Scripture, to be treated with great tenderness, or, indeed, entering upon this question at all, he was anxious to see the privileges of a sect in this respect abolished, and relief

extended, within certain limits, to others—no less conscientious—on whom the state of the law pressed no less heavily :—

I was just going (he writes) to commit her to prison, stating how much I regretted that I had no option in the matter, when the parties, by compromising the suit, saved me. But how hard this is on the parties, as well as the judge and witness. It might have happened in a criminal case: and then the effect might have been thus: the judge commits the witness and acquits the prisoner, or perhaps convicts him for want of her evidence; for he cannot postpone the trial once begun. Surely this is a case for the legislature. When once the principle of requiring an oath has been relaxed in the case of several sects of Dissenters, surely it is time to say that such scruples, if conscientious, should be respected in all: and that a greater amount of 'heretical pravity' (saving your presence) should not be required to give a person a privilege. Yet there must be some criterion to distinguish between conscientious people and rogues, who wish to lie, but are afraid to swear to a lie. 'This I should propose to do by registering all such persons who will choose to go before a public officer, say Justice of the Peace or Quarter Sessions, and by testimony of their neighbours, satisfying such officer or court of their conscientious scruple. Thereupon let them be registered as *non-jurors*: and when they come into court, let them say that they have been so registered—a false statement to that effect being a misdemeanour. For my part, I should like to abolish all your sectarian privileges, and substitute such a general enactment for them all. The affirmation should be that now in use—substituting 'I, A. B., a *registered non-juror*' for 'I, A. B., being one of the persons called Quakers.'*

* * * * *

I have had a sad case of murder to-day to try. It lasted from nine in the morning till eight at night, and ended in the

* This was written before the Common Law Procedure Act of 17 and 18 Victoria had introduced any change upon the point, so far as *civil* courts are concerned.

conviction of two unhappy men, and the acquittal, a very reasonable one, of the third. There is not a shadow of doubt as to the propriety of their conviction: but the case is a very sad one. A poaching case is always so. Had there been a struggle and a killing in hot blood, though it would have been murder, being a resistance to lawful authority, I think I should have had no difficulty in recommending mercy. But here it was a murder totally unprovoked—the keepers had not spoken to, or attempted to touch the men, when they began by firing the fatal shot. Unless, then, we are to say that poachers have a right always to kill keepers, who do nothing to them first, without being hanged for it, these men must suffer for it. If the punishment of death for murder of this sort is to be repealed, these men's lives may be spared, but surely not otherwise.* As I have no authority so to determine, my course has been clear—to leave them for execution, sending up my report on the case, without any comment thereon, to the Executive Government. The clearness of my course has made me less anxious than usual on so fearful a subject. But I did tell the grand jury my mind about preserving game—I quoted to them what St. Paul said—‘If meat make my brother to offend, I will eat no more so long as I live’—and I said that surely a Christian *hero* will also say ‘If my sport make my brother to offend, I will give it up so long as I live.’ I really thought with such a case in my calendar that I was bound to say so much to save my own conscience from participating in guilt. * * * * *

Some of the occurrences of the years 1844 and 1845 furnish topics for the following letters. One of those, the issue of a Commission of Inquiry as to the re-arrangement of the Circuits and other legal business, may not be without interest at the present time, when the suggestions of a similar commission, in the deliberations of which he did not live to take part, are before the public.

Mrs. Opie had been recently inveighing against what

* The life of one was ultimately spared, the man who actually fired the fatal shot being alone executed.

she terms the gossiping, detracting conversation in which we allow ourselves to indulge before servants.

I am sure [she writes] it must sometimes be in the power of a waiter to cause his master or mistress to be prosecuted for defamation, were he so inclined; and certainly their ideas of right and wrong must often be rather clouded and mystified, when they hear how their superiors speak of and ridicule their intimate associates, and even their relatives. Thy proposal [she continues, passing to other matters, and in particular to a suggestion made by her correspondent as to the advisability of adopting a more equal partition of the year by the two ordinary circuits, with a view to obviate the necessity of a third] seems so simple and so easy, that the wonder is that it was never thought of before. And so, perhaps, is always the case with discoveries. Had it, however, been acted upon sooner, the High Sheriff would have been saved a good deal of money, but *I* should have lost some hours of occasional interest and amusement; for even my friendship for him has not been able to make me regret the winter assize here at Norwich, even though I am not fond of the criminal court.

I did earnestly hope thou mightst come hither at the next assize, until I found that thou mightst possibly have to try that wretched man, John Tawell. He seems to have been a man in whom the good and evil principles were often in conflict, but the evil most frequently the conqueror. After his first faults were known, one of our elders, accustomed to visit young sinners, told this boy that if he went on in his wicked career it would certainly prove fatal to him at last; and he spoke so forcibly, that he burst into a violent flood of tears, took a bill which he had just forged out of his pocket, and burnt it in the Friend's presence. In this man's forgeries lay cradled the subsequent murder. This reminds me of a fine passage in Carlyle's 'History of the Revolution':—'The beginning holds in it the end, as the acorn holds in it the oak. The one lies in the other, even as Hannibal's rock-rending vinegar in the sweet new wine.' Solemn enough, did we think of it.

* * * * *

The following is in reply to the foregoing :—

What do you say of the old hermit, who, being unable to read, had the Psalms read to him. They happened to begin with ‘I said I will take heed to my ways, that I offend not with my tongue.’ ‘Stop,’ said he, ‘let me go away. I will return when I have accomplished that.’ It is said that he did not return for nineteen years; and if he accomplished that, I doubt whether any one at the Last Day will be found to have done more in the same time. This story has reference to what you said in your last letter, and concerning what you then said.

I am in hopes that we shall do something about altering the circuits. The Government are about to issue a Commission of Inquiry. Parke, Coleridge, and I are to be at the head of it; and we are to be assisted by four barristers and three gentlemen of the country. We are to inquire as to the times of holding assizes, and to re-arrange some of the circuits, making them less unequal in size and labour. It is surely absurd that the Northern circuits should require three times as much labour as either the Midland or Norfolk; and yet two judges should do the duties of each. If the Norfolk judges are fairly worked, the Northern judges cannot be said to be fairly worked also. I do not say that all the work should be equal; for it is fair that the oldest judges should have the easiest places. But the disproportion is too great. I speak against my own interest in saying so, for I have had the hard work, and am now arrived at the easier place. We shall, however, endeavour to disturb existing interests as little as possible. * * * *

If I had not been always fully aware that absurdity never grows old, I should have been more surprised than I am at a controversy about preaching in a gown or surplice existing in this age of the world. Strange that between Tweedledum and Tweedledee such difference should arise. For my part, I wish they would wear both this cold weather. Meantime, the Oxford people seem to me to have gone stark, staring mad, in proposing to degrade Mr. Ward by a vote of convocation. He seems a foolish man, and to have written a book containing some objectionable passages; but the idea of convocation, consisting of some eight hundred or a thousand persons, acting judicially, and

hearing testimony to prove that he wrote it, and then considering whether he is guilty, and then apportioning the punishment (for all this is involved in what is proposed), seems to me worthy of Bedlam—and Bedlam alone. *Hanwell* would disown it.

Good-bye, my dear cousin, and in the true, extended meaning of that phrase, ‘God be with you.’

The following was written in the winter of 1845, and contains a lucid statement of the ground upon which the conviction in a notorious criminal case, tried at the last Exeter Assizes—*Regina v. Serva and others*—was, on reconsideration, quashed.

I answer your letter not quite so promptly as the Duke of Wellington would have done, but as soon as I could. I have no vote for the hospital; if I can assist Dr. J——, I certainly will; not because you or any one else asks me—for I have a conscience about hospitals, where we impose medical men on the poor—but because I believe him to be a skilful physician.

We have let off the Exeter pirates. Eleven judges out of thirteen were of opinion, after the arguments, that the English tribunals had no jurisdiction in the matter. I flatter myself that our reasons were quite unanswerable. No doubt the treaty with Brazil makes the slave-trade piracy: but *two* nations cannot make a crime against the law of nations. Cutting fishing-nets was once made piracy by a treaty, but no one ever dreamt that *all the world* could try people for it. Real piracy by the law of nations is, no doubt, triable by *all*; for a pirate is of *all* countries, or rather of *none*. The folly of modern times is to call things by wrong names, and then to argue from the names as if they were the realities. Slave-trading is a great crime; and if *all* nations would make a law about it (which, however, is impossible), might be piracy. In the meantime, let us make treaties and *municipal laws* to punish these people, and *then* we can try them. I am sorry that the men were not punished, but in no case do I think they ought to have been hanged, for I don't think the crime was murder, inasmuch as they were illegally captured, and had therefore the right to resist: and though in resisting they

were guilty of atrocious excess, still the original right to resist reduces it, I think, to manslaughter. However, they are now, I presume, to be delivered up to the Brazilian Government for trial, and *we* shall hear no more of it.

In another letter, addressed very shortly after to Mrs. Opie, speaking of a trial on his recent circuit which had resulted in an unexpected acquittal, he thus expresses himself on what may perhaps be regarded as a most important question, namely, the precise point to which, in summing up a case to the jury, a judge should with propriety go.

I think that the C—— acquittal was surprising. But it sometimes happens that the extreme *fairness* of a judge is taken by juries as an intimation of his opinion *in favour* of a prisoner, when he means only to leave the question with perfect equality for their decision. Men who have practised in equity before judges of intelligence as to facts, are apt to sin this way. When juries run for conviction, this equality turns the other way for the prisoner. However, I think that a judge should, without *over-riding* a jury, pretty clearly intimate his opinion, if he means to have a right verdict given. It is, however, a very delicate and difficult operation, to go to the proper, and not to exceed the proper limits, and of the two evils I am inclined to prefer the one which falls short, to the one which exceeds, on the side of dictation.

The Irish famine of 1846, which excited so much sympathy throughout England during the winter and spring, did not fail to awaken a warm feeling of commiseration in the breast of one who at all times keenly sympathized with the distresses of the poor; though the feeling was in this case accompanied by one of indignation at the large amount of imposture and cant intermingled with the suffering that unquestionably existed.

I fear [he writes] that the Irish are in severe distress, but there is no distinguishing at this distance between suffering and imposition. What a discredit this is to that nation, that the season of misery should be so *generally* used by scamps and in-

postors for their own selfish purposes. I almost begin to think that the only hope for them is to leave them to themselves. The moment anything is done, all things are expected to be done; and the nation of intending beggars and *sine-workists* is the result. It is folly to treat them as fit for liberty. 'For who loves that must *first* be wise and good,' as Dan Milton singeth. They are like children, and want a strict schoolmaster, perhaps a little paternal despotism, for some years yet to come.

This suffering is probably intended for our cure from the wickedness which deserves it. For though I do not believe that suffering as to individuals is a proof of sin, for it is often quite the reverse, yet I do believe that wicked nations (the corporate nation having no soul) are almost always punished by the infliction by the Almighty of temporal calamities. The time is delayed sometimes; but unless delay produces repentance, the calamity comes at last. * * * I am delighted to hear of your friend Mr. Forster's intended expedition to Ireland. It is very desirable to see as well as to hear. But when such persons as Dan O'Connell and the Archbishop of Tuam (*soi-disant* contrary to law) talk of *demanding* millions as a *debt*, not a charity, it is enough to make a man button up his pockets, and ask for his proofs; and they are that Ireland has exported to us for years corn and meat, for which we have honestly paid the people who sold them to us. An obligation converted into a debt! They entirely sink all mention of the payment. To-day I had a letter asking for a shilling subscription to a Ladies' Relief Fund, probably some one using this as a means of levying fraudulent sham contributions, to be applied to their own relief. It is in fact to a great extent a nation of sturdy beggars, and I shall anxiously look for some truth from Mr. Forster's personal inspection. * * * *

I have been reading a sensible letter from Sir John Gladstone about the proposed repeal of the duty on tea. He shows that since the abolition of the East India Company's monopoly, the price of tea (notwithstanding the doubling of the Government duty) is one-half of what it was before. Now in twenty years that change has increased consumption from thirty millions of pounds to about forty-five millions. How can it be reasonably expected

that to lower it one shilling more will increase it to a similar extent *immediately*, and make forty-five millions into sixty? and even if done, the loss to the revenue will then be near two millions sterling annually. The cry is got up by failing manufacturing speculators in the China trade, who care nothing about you and me, whose Property-tax will be doubled to pay for their greedy gain. Ditto, I say, to the agriculturists who are agitating to repeal the Malt-tax. These are the fruits of Peel's conduct as to the Corn Laws. If he had repealed them because he thought them wrong, the mischief would have been trifling, but to yield to one *agitation* leads to other similar claims.

The death of one of her most cherished friends, Mr. Joseph John Gurney, occurring at the opening of the new year, called forth from him the following letter of sympathy, addressed to Mrs. Opie, in the course of January, 1847.

I have this afternoon heard, my dear cousin, news which I fear must be true, and which must have caused you already much sorrow—the death of your dear friend, Joseph John Gurney, of Earlham. I do most cordially sympathize with you in the heavy loss you have sustained. As for himself, it is, I feel assured, only a gain, in exchanging mortality for immortality. But to you, and to those to whom his kindness has so long endeared him, and who looked up to him as a guide and minister, the loss is indeed great. Even those who, like me, did not agree with him in religious opinions, admired his active philanthropy and holiness. Such as he was, will, I doubt not (whatever forms of worship they may have adopted), be counted up, when our Lord shall reckon up his jewels. They will be purified from all error in his presence, where there is fulness of joy for ever. I see by the papers that one of his last acts was to send help to the sufferers in Ireland. It is pleasing to see this, though, when I read it, I had little idea that he was dead. How one's contemporaries are falling around. I am getting to be one of the stragglers now on the bridge in the 'Vision of Mirza,' and the holes are opening around me. God help me, and forgive my many sins, and enable me yet to love him better.

Farewell, may he who alone can, comfort you.

In the spring of 1847, wishing to revisit old haunts, he selected the Northern Circuit. In the following characteristic note, written in answer to an application for his vote in the election of a physician to an hospital, he states the reason of his choice :—

Dr. Tawke shall have my proxy for three reasons :—

1st. Because you ask it.

2nd. Because he married a relation of my old friend Smyth.

3rd. Because all lawyers are partial to talk.

You will observe that I pay no regard whatever to his professional merits, being a whole hog voter.

No, madam, I was not *obliged* to go the Northern Circuit, but have done so to the surprise of all persons at my vigour, in taking the heaviest when I might have taken the lightest labour. I had, to say the truth, a desire to go back to my old fields, and to see again old faces, which I had lost sight of; and so, having the assurance of very agreeable company in my good brother Rolfe, I resolved to quit home, and visit the frozen regions of the north. It has as yet answered very well; but then all the labour is to come. We begin with the plums, and the rest of the pudding is reserved for us.

The ensuing summer was spent as the preceding, at Lowestoft. Among visits which he never omitted to pay during his annual residence in Suffolk, was one to his aunt, an old lady of ninety-four, who lived at Norwich, under the care of her niece, Mrs. Opie. The respect which he made a point of paying to her, in the decline of life, is a pleasing evidence of the strong regard which he entertained for the ties of kindred. The infirmities of age, however, appear to have rendered the task of watching over her no sinecure.

My aunt [writes Mrs. Opie, in the autumn of 1847], is, as usual, suffering much. It is a striking instance of sense and shrewdness outliving the judgment. How grateful I sometimes feel when I remember my dear father's last illness. A pattern

he of humble resignation, full of gratitude to me and those who waited on him. To remember him in his last days and on his dying bed, and when his last words were, as I knelt beside him, 'pray for me thyself, also, my dear child,' is one of the greatest comforts of my own declining years. Pray excuse this. It is not often that I am thus carried back to the past. I find that I have written thus far without alluding to this most atrocious deed at Paris [the murder of the Duchess of Praslin]. I should not be surprised if the criminal's having escaped the expected punishment should be made an excuse for a revolutionary outbreak, on the plea that his friends furnished him with the means of self-destruction, in order to escape from justice here. The crimes of English men and women seem to increase every day, but they are in low life chiefly, and make no noise. If thou hast not read Appert's account of Ten Years at the Court of Louis Philippe, I think it would amuse thee. I knew him at Paris, where he was called 'Appert le Philanthrope.' He accompanied some friends of mine and myself to the prisons there, in 1829. He talks, too, of so many of the *hommes marquants du jour*, with whom I associated, that I was especially interested. But had I not known him or them, it would have been almost equally interesting to me; and his benevolent objects would interest thee, I think.

The next occasion upon which Mrs. Opie is addressed, is that of the death of their common aunt, the lady to whom reference has been made.

I enter completely [he writes, in the January of 1848], into your feeling of a want of interest arising from the failure of your dutiful occupation of so many years. I am sure that you may feel satisfied that you have done all that an affectionate child could do, and this surely is a great consolation, if, indeed, all the circumstances were not of themselves full of it. If I were asked what I should like best as a memorial, I should say a certain ostrich egg-shell, which I have remembered from youth to old age as a sort of heir-loom in the family. It clearly belongs to you, as the representative of the eldest brother; but perhaps you may not care about it. Pray, however, do as you like best.

* * * * *

The Queen's Bench, for the last few days, has been full of Hampden. I am sorry for the whole affair, and angry both with Lord John for raising the storm, and with the Church Æoluses, who form the constituent parts of the tempest. I wish they had quietly remonstrated, and then, shrugging their shoulders, had said, the responsibility is with your lordship. As it is, I suppose, a long litigation, and perhaps an appeal to the House of Lords at last, will be the result.

Again, in February, 1848, he prepared to start on the Northern Circuit, being induced thereto by the desire, as he laughingly informs Mrs. Opie, 'to go nine times and earn a jacobus,' the dagger-money of old times presented to the judges at Newcastle, 'for each of his children.'

This year [he adds], as last year, I am tempted by Rolfe's agreeable qualities to go with him; and as I did so well last year, and as the bar were so civil as to ask me to come again, as having given them entire satisfaction, my *vanity* therefore was enlisted on the same side. Whether I shall ever venture on it again is very doubtful.

In the winter of this year it fell to his turn, in concert with Mr. Justice Erle, to preside at the Liverpool and Chester Assizes. The disturbed state of the country, resulting from prevalent distress, as well as the inflammatory opinions which a year of revolutions had tended to disseminate, filled the criminal courts with charges, many of them of a very grave character. The following letter is written to Mrs. Opie from Liverpool, upon the conclusion of the assizes there:—

Dec. 10, 1848.

As the Government have published my charge and the sentences at Chester, paying me the compliment of saying they wish to distribute them in the disturbed districts, as being likely to do good, I thought you would like to have a copy; so I send it. We have just finished our heavy labours here. All the Chartists tried have been found guilty, except one, and he most properly acquitted. They all agree they have had a fair trial; and to-day

saw the remarkable sight of ten men, all convicted, and all severely punished, thanking the judge who tried them for his fairness and impartiality. I am a little vain of this triumph of the law. Don't, however, be shocked at my egotism.

There are two poor men who must be left for execution—both for murder. One exactly, in rather lower life, a case of Hacket, who killed Miss Ray, Basil Montagu's mother. The other for the Ashton policeman's murder—quite clearly made out not done by his hand; but as he piked the man through the thigh, and also fired a pistol, which missed his intended victim, I do not see how he can be considered in any different light than the man who fired the fatal shot. The jury have, however, recommended him to mercy on that ground. I do not know what the Government will say, for it will rest with them; and I shall simply transmit the recommendation, not adding an opinion either way. I think if the real man was also found guilty, they would spare this man. But he is in America, and an example must be made, so I fear the result will be fatal, and can see my way to no other conclusion.

You will be glad to hear that both here and at Manchester trade is steadily reviving, and all are in good hope and spirits, and say that the crisis is past, if Europe remains tolerably quiet. This will put an end to Chartism more effectually than any trials. Both together will for some time annihilate it—the leaders all in gaol—the people at work again.

The following letter was written in reply by Mrs. Opie, a few days later:—

I was going to write to thee when thy welcome letter arrived; I had already read all the proceedings 'before Baron Alderson,' and, as thou wilt suppose, sorrowfully found thou hadst been forced to condemn to death—knowing thy aversion to perform that duty. I shall now read the charge at full length, and expect to admire it fully.

I disliked for thee the task to which I found thou wast called, but am now very glad it was laid on thee, as I trust and believe it will work a benefit to the country, and to the increase, in rational minds, of thy well-earned popularity.

I wish thou couldst have heard what I heard at Sir R. Harvey's the day before yesterday. As may be supposed, the dreadful murder [the Stanfield Hall case] was talked of, and my neighbour, the mayor, soon began to express anxiety as to who would be the judge likely to try the prisoner Rush; and the wish for thy services here next spring was warmly expressed. But when the gentlemen appealed to me, I ventured to say that I was glad to find thou wast not likely to try the case; because I not only was perfectly aware what suffering was inflicted on thee whenever thou wast forced in duty to convict capitally, but I felt sure that the task of trying a culprit for murdering a man whom thou hadst known all thy life, and who was a frequent guest at thy father's table, would be to thee an undertaking of a very painful nature indeed. I was really sincere in what I said, but I did not expect the gentlemen to agree with me; and so the matter dropped. But it was followed by many interesting particulars of Rush and the late transactions, which were new to me. I suppose the mayor was right in his law, and earnestly desire that he was so. He said the young wife had no marriage settlement, and having no marriage portion, therefore she would, maimed, and miserable, and penniless, have quitted her once happy home, but for this providential circumstance, as I may call it. They have been enabled to ascertain that poor Jermy died thirty-two seconds before his son. Jermy was shot in the porch, and it took the murderer thirty-two seconds to go from the door through the hall into the drawing-room, and back into the hall, where he met the young man, and shot him dead almost instantly. But the younger Jermy survived long enough to succeed his father in the estate, and ensure his widow her dower. I hope this is correct. I tell thee what I heard. A strange thing took place to-day. Rush was carried to Stanfield to be confronted, at his own request, with the still scarcely surviving women. He hopes, no doubt, to bully them into losing the power to hurt his cause by their statements; for a clever friend of mine, who saw him cross-examine policemen in a small committee the other day, says his legal powers are considerable. It was, I am told, a fearful thing to look on him when, most unexpectedly, he found the

chief examiner was eliciting gradually from the victim of his profligacy the discovery of the forged papers. He started up, looked the demon he is, and used most frantic gestures, looking at her as if he would fell her to the earth; but she told her tale, regardless of his fury. Enough of these horrors. * * * * *

The pain which a case of capital conviction inflicted upon him, well known to the writer of the foregoing, from her intimate knowledge of his character, was one indication among many of the sensitive tenderness by which his nature was distinguished. It is hardly too much to say that it cost him a painful effort, from the outset to the close of his judicial career, to check the tendency of an unusually indulgent and sympathizing temper; and few things delighted him more than to be instrumental in obtaining a merciful consideration for circumstances which allowed, with propriety, of such intervention. With a peculiar intensity were his feelings of compassion enlisted on behalf of the young. The guilt or distress of such went at once to his heart; and again and again has the same appeal roused him to unsparing personal efforts to relieve or reclaim. Of efforts so directed, in one instance out of many others, the following letter will speak, written by a gentleman through whom he had communicated with the unfortunate youth to whose case it relates:—

On my return from Paris yesterday I received your two letters. I am unable to express my satisfaction at the results your merciful kindness has obtained for the unfortunate youth, G—, and his distressed parents. I immediately went to the prison, and to my great pleasure found that Mrs. — was with her son; and to them I read your beautiful letters, containing what was to them most joyous tidings. The mother was naturally much affected, and I am sure it would have been a real pleasure to you, if you had witnessed the full expression of their gratitude for your interference in their behalf. Mrs. — assures me that

your wishes shall be in every way carried out, and it will be their greatest delight to let you know, from time to time, how the youth conducts himself. I have given him a copy of your last letter, and I feel sure he will ever remember your advice, and justify, by his future good conduct, all that has been done in his behalf.

I am charged to express to your lordship the deep feelings of gratitude and respect entertained for you by this unfortunate family; and I must also express my own thanks for the kindness and promptness with which you have responded to my application.

The following are extracts taken from communications addressed to him under somewhat similar circumstances:—

It is with great pleasure that I inform you that I have obtained permission of the committee of the — Asylum to send to that establishment the young girl, Alice —, convicted before you at the last — Assizes, and sentenced to two years' imprisonment; on which occasion your lordship humanely intimated to me that, if I could place her in an asylum, you would endeavour to obtain an order for her removal. * * *

It is a very sad case. * * * * The governor of Pentonville will be at all times ready to admit you to see the prisoner.

It will be conceived, too, that an appeal from one who avowed the misery arising from circumstances which were brought before him in his judicial capacity to be the only excuse for addressing him, did not fail to awaken his sympathy, as a letter of thoughtful advice, gratefully acknowledged by his unhappy correspondent, testified. In this case, too, it was the sudden clouding of youthful prospects which peculiarly touched him:—

I have read your letter [he says, in replying] with great feeling of respect and sorrow. The latter is entirely unmitigated by any feeling of blame towards yourself and those dear ones who

are afflicted in your affliction, without, as I believe, the smallest fault on your or their parts. Even your unhappy relative, blameable, as he no doubt was, may very likely, I hope I may find it so in your statement, have circumstances of mitigation to allege as to what he has done. * * * One reason why I desired to inflict the punishment of transportation was, I may tell you, that it might be *literally* inflicted. I concluded that his family would perhaps follow him into exile, and so ultimately rejoin him. In *the colony* much of mitigation, without damage to the example, might have been allowed; and the future would have been open there.

But it was not in the young, when only criminal or unfortunate, that he felt an interest. There was at all times something in their temperament congenial to his own: something which rendered their society attractive to him, and endeared him in turn to them—the power of throwing himself with all the zest and freshness of a contemporary into the feelings and aspirations with which the opening of life is regarded. Their hopes and prospects, their struggles and successes, warmly elicited his sympathy. Perhaps this trait was most of all evinced towards young men of his own profession. Although he had never experienced at the outset of his own career a period of similar discouragement, he did not sympathize the less keenly on that account with those who met with disappointment: again, no one more cordially rejoiced in their prosperity. To afford them countenance and encouragement, if no more material aid—to receive them in his house, and exhibit towards them in private life a friendly bearing—was not only the impulse of his nature, but with him a matter of conscience; being, as he conceived, one of the implied conditions on which he occupied the position and received the salary of a judge. Many personal friendships, which took their rise from the adoption on his part of such a line of conduct, testified to the consistency with

which it was through life retained, and the happy results by which it was attended.

It did not, however, require the incentive of any special interest to awaken sympathies which overflowed on every appeal. It is one thing to possess tender and sensitive feelings, and another to have a capacious heart; access to which is not practically reserved for particular objects, but lies as freely open to all who claim admittance on the plea of their common humanity. It was characteristic of the subject of this memoir that at no time of his life was he without special objects of a benevolent interest. Many grew up insensibly round his home; but some were found wherever he went; for he carried into every scene of life the same genial and comprehensive heart. Often the opportunity to obey its promptings was brought across his path by chance—and some spectacle of misery or suffering of which he was an eye-witness—an accident, perhaps, or some calamity, or sudden bereavement—called those promptings into energy. Even to come to him with the story of such things was invariably sufficient to arouse his interest; and his sympathy, and more than his sympathy, was readily accorded. And into every effort for the comfort or relief of others he sought to infuse something in the doing which enhanced the intrinsic value of the deed—something, if possible, of personal intervention by word or deed, which his own sensitive appreciation of kindness instinctively suggested, and which threw, as it were, a grace over the charity.

This 'large-heartedness' was in truth in keeping with the rest of his moral and intellectual nature, the key to which consists in the absence of anything petty or restricted. As the range of his sympathy was wide, the view which he took of a subject was broad and manly, and unbiassed by any narrowing influence. The same spirit of largeness

regulated his judgment of persons. He judged of their motives and conduct, not by reference to any ideal standard of his own, but the aggregate results at which the experience of a lifetime conversant with every side of human nature enabled him to arrive; accepting as an accomplished fact the inevitable blending of good and evil; and while he retained to the last the same fresh and hearty admiration of the former, capable of making due allowance for infirmities of mind or temper which particular circumstances might conduce to generate.

Mrs. Opie having expressed her warm approval of the contents of the Chester charge—

I am glad [he writes in answer, early in 1849, from the Court of Exchequer] that you think well of it, and the sentences. The only good thing in the charge is what I took (*stole*) from Lord Lovelace's pamphlet on the statistics of France—*my* only merit being that I have applied it as an argument to the people to show how they suffer by disturbances in their physical comfort, much more than the rich in proportion. And this is to my mind very clearly made out; and I believe it was this which disposed the Government to wish that it should be printed for distribution.

* * * * *

Yesterday the Guizots came to see us. He was very agreeable. They are going back to France in April. I hope they will wait till the present struggle is over. He thinks the National Assembly will now give way, and dissolve themselves; and a new Chamber of Conservatives, almost of Royalists, will be returned; and that if so, either Louis Napoleon or some Bourbon will be king. It would be odd to see Richard Cromwell the Second become king at last. Guizot speaks well of Changarnier, as a man of resolution and talents. I could see how sore he felt about Louis Philippe's want of resolution, by what he said. * * * And now I think I have written enough. If my letter be very dull and incoherent, it is not unlike the argument of the learned counsel who has been and is speaking all the time.

The following was written later in the same year :—

June 12, 1849.

The gods have granted half thy prayer, my dear cousin. We are coming to our old quarters for the summer, where we hope to see you. You will have at Norwich Assizes, in lieu of me, Lord Chief Justice Wilde. I mentioned you to him, when he and Lady Wilde dined here the other day, and he promised you should sit by him on the Bench as you used to sit by me. My circuit (the Midland) will last about a week longer than the Norfolk, but I have as yet no troublesome cases to try. * * What ravages cholera seems making at Paris. There the upper as well as the lower classes seem to be affected. How mercifully have we hitherto been spared in London. The wise people say that Paris is very unhealthy, badly watered, and worse sewered. I suppose this is the secondary cause of it. Guizot has declined for the present to return to France. He means to visit us at Lowestoft again this summer. Ditto Dr. Whewell, and other notables. So we shall be in good company. * *

These agreeable anticipations were overclouded in the course of their fulfilment by one occurrence, the death of a valued friend, the Bishop of Norwich. During his lengthened visits to East Anglia, Baron Alderson had opportunities for observing and appreciating the good effected by Bishop Stanley throughout his diocese; and while he admired the vigour of his administration, there was something specially congenial to him in the simplicity and earnestness of his character. It was therefore with real grief that, in the early part of the autumn, he received the intelligence of his unexpected death, while on a visit in Scotland. A melancholy satisfaction it was to him to make one of the many mourners who followed the Bishop to his last resting place in Norwich Cathedral, amidst a remarkable expression of general sorrow and sympathy.

I was pleased [he says, alluding, in a letter written some months later, to the simple and touching way in which Middle.

Jenny Lind had expressed her feeling at the Bishop's death] to see how much sorrow Jenny Lind showed for our dear friend at Norwich, and to notice her pretty attention in sending a chaplet of ivy as 'her tears,' to be laid on his grave. A pretty Swedish custom, and a pretty subject for a copy of verses.

Meanwhile November, as usual, brought with it the customary return to London, and work. The following note breathes of the spirit of Christmas, being written in acknowledgment of a Norfolk turkey which Mrs. Opie—like a good country cousin—had dispatched to town:—

Christmas Day, 1849.

MY DEAR COUSIN,

Many thanks for a Norfolk turkey and sausages, which I am glad to say is this moment on the spit, and of which I dare say we shall give a good account at seven o'clock. The —— and —— are coming to eat it; and A—— will assist in the division of the Ottoman empire in its roasted form.

In return we all send you a lump of love as big as your turkey, with the desire that you will take it all first to yourself, and afterwards distribute it (having been improved by your own in its passage) amongst your friends.

Your ever affectionate

E. H. A.

The doubt expressed in a previous letter whether he would ever again take the Northern Circuit, was destined to prove unfounded, for in the spring of 1850, as well as in the same season two years later, he was induced to undertake its labours. Whilst at York, on the former of these two occasions, he was rewarded by a most amusing day of sight-seeing, in a visit which he paid to Mr. J. Scott's training establishment for race-horses, near Malton.

We saw [he writes to one of his daughters] the most exquisite horses in such order! Each with his groom boy attending him, rubbing him down, clothing, and feeding him, like a young

nobleman with his tutor. Most of them appeared very gentle. I was desired to feel how hard the muscles of their crests were, and the particular meritorious points of each were noted, together with names, pedigrees, &c. &c. I saw three which are to win, or to be near winning, the next Derby, and many others, whose names I am ashamed to say I have forgotten; but which, but for that, would live in my admiring recollection. I was really much delighted with seeing so much equine beauty and blood. After this inspection, which, as there were fifty at least, took some time, we adjourned to breakfast, where I was introduced to Mr. Butler, the celebrated jockey, with whom I conversed on the secrets of sweating down to a riding weight, and was surprised to learn what blankets and fasting will do. Before Lent is over, I will perhaps illuminate your mind on these sublimer mysteries of the art. Our breakfast was not, I am sorry to say, an example of the rule. I presume the Pope of jockeys had on this day granted him a dispensation. * * * After breakfast we started to see the inspected horses gallop on the wold, a most charming turf, elastic and soft, with a good deal of undulation, and commanding a most extensive prospect—in one direction sixty miles of valley. When we got to the top, we took our station, and presently came by in cantering or galloping succession our fifty horses—a most beautiful sight—our host acting as nomenclator, called out the name of each as it passed in review. Then we went to another part; and walked to a knoll of furze, and shortly after came by our friends again in full gallop, like a race, in a cluster of ten or twelve, then four or five, and so on—a sort of succession of races. Mr. Butler did us the honour to get on one, and lead the race. What struck me much was the tenderness with which the horses are treated, and their consequential gentleness. After this we went to see the yearlings in a paddock—one, a *year old*, cost 450*l*. Before leaving, our host showed us all the interior arrangements of the establishment. The boys live like collegians, at a common table, and are locked up at night like schoolboys; and a man sits up all night to watch, lest rogues should break in and poison the horses in training. This is the bad part of the thing. It is obvious that the establishment is in a state of continual siege

and fear of internal treachery. On the wold we saw in various points men lounging about. 'Who is that?' 'Oh, that's Manchester Bill, touting for somebody.' So these loungers were all watching the training, in connexion with *bettors* at London, Liverpool, &c. Each of them writes daily to his employers, such a horse does well, such a horse is lame, such a horse coughs, and the like—and then the rogues go and bet with people who don't know it, and so are sure to win. Indeed, our friends and entertainers seem to me to do so too, by certain avowals they made. I mean availing themselves of what they *fairly* knew, but as I think unfairly *used*. Such is jockey morality—to me, similar to obtaining money by cheating—but it is obvious all do it—and it is *called* fair.

This was not the first occasion upon which he expressed himself strongly against certain of the evils incident to the turf. In the memorable case of *Wood v. Peel*, better known as that of 'Running Rein'—which was tried before him in the summer of 1844—he pointed out in forcible terms, from the bench, another of its bad effects, the association of gentlemen with persons infinitely below them in station. The case turned, it will be remembered, on a question as to the identity of a horse, the winner of the Derby of that year, alleged by the defendant to be, not Running Rein, but another horse, known as the Gladiator colt, and disqualified for competition by reason of age. Its production to the jury therefore was of the utmost importance, in order that an examination might be made of its mouth, and of one of its legs, which, in the Gladiator colt, was scarred in a particular manner. A judicial order had been issued for its inspection, but the horse had been suddenly spirited away, and compliance with the order by this means evaded. The evident desire on the part of the plaintiff to keep the horse out of sight was met by a determination no less marked on the part of the presiding judge to insist on its production. 'Produce the horse—

that is the answer to the whole question. Is it sufficient to hear the surgeon's deposition as to the appearance of a dead body, and shall the jury be told that they are not to see that body?' And again, at another stage of the trial, he observed that there was an ancient case in the books in which a boy who had found a jewel, took it to a diamond merchant to ascertain its worth. The merchant detained it, and an action being brought against him, the jury were directed, and very properly so, to presume, as against the merchant who did not produce the jewel, that it was of the greatest possible value. So here the non-production of this horse would surely warrant the jury in any presumption against Mr. Wood.

On the morning of the second day of the trial, the horse being still non-apparent, the counsel for the plaintiff was under the necessity of stating that his client had become satisfied that some fraud had been practised with regard to the horse, and had determined to withdraw from the inquiry. Upon this abrupt conclusion of the case, Baron Alderson, in parting from the jury, expressed himself to the following effect:—

There, gentlemen, is an end of the case: but before we part, I must be allowed to say that it has produced great regret and disgust in my mind. It has disclosed a wretched fraud, and has shown noblemen and gentlemen associating and betting with men of low rank, and infinitely below them in society. In so doing, they have been themselves cheated, and made the dupes of the grossest fraud, as they may depend upon it will always be the case.

The fatigues of this Spring Circuit of 1850 proved a little too much for him: the heavy work at Liverpool conducing to bring on a sharp attack of illness, by which he was laid up at Sandgate, in Kent, whither, on the conclusion of the assizes, he had hastened to join his family.

The experience thus unpleasantly obtained exercised a due influence on his choice for the ensuing year.

I have taken the Midland, and rejected the Northern Circuit, [he writes to Mrs. Opie]. Last year the latter knocked me up, and laid me on the sick-list after my return from Liverpool. You need not, however, be at present in any immediate fear for me, as I am, thank God, very well for the second judge (in seniority) on the bench.

The 'Papal Aggression' of 1850, with its unfortunate result in the agitation which pervaded a portion of the public mind against a certain party in the English Church, did not fail to be observed by him with the painful interest which such a subject possessed for one who in religious questions was essentially a lover of peace and moderation. Inclined on the one hand to support persons who were made the victims of sectarian clamour, and provoked, on the other, by the pertinacity with which they drew upon themselves so large an amount of hostile attention, it was with feelings of a mingled nature that he viewed the contest. The opening extract from the following letter serves to show upon which side his sympathies preponderated.

The Bishop of London [he writes, his saddened tone bespeaking the earnestness of his feeling], appears to me to be in a scrape, in insisting on Mr. Bennett's resignation of St. Barnabas, Pimlico. This is to deprive a man for a little over-Rubrical and ceremonial absurdity who has spent his whole fortune in building the church and schools from which he is turned out: whilst it not unfrequently happens that clergymen of actual profligacy are only for a short time suspended from duty. So much more dangerous is it to offend man's prejudices than God's laws. * * * * * Meanwhile we hear talk of a new Prayer-book by *Act of Parliament*: and this when the Queen, in the Coronation Oath, swears that she will maintain the rights and privileges of the Church—one of which clearly is

that no alteration in discipline or doctrine shall be made without the consent of the Church in convocation, to be *afterwards*, no doubt, confirmed or rejected by Parliament, but clearly requiring the united act of both, and the previous act of the Church itself. The State has a *veto* on all changes, but cannot originate any. * * * These things are enough to make a thoughtful man sad. Principles appear to me becoming nothing, and expediency (how I hate the word!) everything. It would be a curious thing to go to sleep for a hundred years, and then wake up to see how things are. But I don't wish to stay the intermediate period, nor to remain long awake at the end of the period itself, unless, indeed, I should find the Millennium begun, and could enjoy it with those I love also. * * * I am glad you like your new Bishop (Hindes). I thought him a good man, and a *really* liberal man, and think so still.

He could not rest content without making a direct appeal to the Bishop in behalf of Mr. Bennett:—

I feel [he says, writing to him in the December of this year] that as to the other case you have been plagued unnecessarily and unwisely by Mr. Bennett. I do not in the least defend what he has done; but there are times, and surely this is one, in which one's own private injuries, however galling, should, if possible, give way to higher considerations. It is certain, I think, that those members of the ultra-Evangelical party, from whom you, as well as I, do most entirely differ, will not be conciliated by anything you can do. They will fear you less, but will not love you more for yielding to them. Nevertheless, in this difficult and dangerous position of affairs, I would venture to ask if it may not be possible for you to reconsider the case on terms honourable to yourself, at the application of the parishioners, whose interests and wishes should be rather considered than the threats of newspapers, or even your own justifiable displeasure.

I hope you will excuse this note, which —, as anxious as I am for the peace and good order of the Church, was desirous that I should write. He thinks (flattering me no doubt in this respect) that my sincere opinion may not be altogether without weight with you.

No one more earnestly deplored those easings of defection which the Church of England unhappily sustained in the course of the same year. Thus he writes in anxious deprecation of such a line of conduct :—

No man should leave the branch of the Church in which he has been placed merely because it is not so perfect as he wishes. It is his duty to God and his neighbour to do this. He who deserts will have to answer for the infidelity of those souls whose well-being his conduct has put in jeopardy, who, when they find that learned men and men of character cannot agree with, and deem it necessary to separate from, each other, will disbelieve all things. He will also have to answer for the great sin of schism, and delaying the ultimate and perfect unity of the whole by means of those successive purifications of each branch of Christ's Holy and Universal Church, which can best be accomplished by his remaining where God has placed him. I solemnly charge this on Romanists and their perverts in England, as they would have the same right to charge it on me, if I, being an Italian and a member of the Roman Church, were to become an Anglican at Rome, instead of a Reformer remaining in the Church of Rome, to purify it by my example and precepts. * *

To a friend, who admitted that he found it difficult to believe in the existence of any tenable position between the full and unrestricted right of private judgment on the one hand, and the infallible authority of the Church of Rome on the other, he replied as follows :—

I will readily answer your questions to the best of my power. You ask, first, if individuals differ about the interpretation of Scripture on a point involving a cardinal doctrine or practice, who is to determine the right interpretation? Secondly, you repeat the question applying it to two Churches.

I answer thus—first, as to the case of individuals who differ. But before I do this I must begin by defining the terms on which I am to answer. If you mean by '*determine*' the fixing the meaning so absolutely as to preclude *all right of private judgment altogether*, I answer, no one but the Universal Church

of Christ in general council assembled. To that tribunal, as I believe, Christ has annexed the gift of perfect infallibility by his promise, 'Lo, I am with you always, even to the end.' My private belief is that there is no *certainty* that there ever was more than one such council, the one mentioned in the Acts of the Apostles. At any rate, however, the existence of any such real General Council does not extend very far down in the history of the Church; and since the separation of the Eastern and Western Churches it cannot have existed. Absolute infallibility is therefore 'in abeyance,' as the lawyers call it, until Christ shall come to unite his divided (eheu!) Church once more. But if by 'determine' you mean (as I think you really must mean) the fixing the meaning of the disputed passage, so as that a sincere and prudent man *ought* to surrender his private opinion to the determining authority, I answer that I think he ought to do so to the authority of the elder (even if not general) councils of the Church, to the united opinion of various Churches, to the opinion of the Church of the country in which he lives, to that of learned members of his own Church. I have put them down according to my notion of their precedence and weight. If they unhappily differ, he must exercise a firm but humble judgment, and decide for himself; but of course between their conflicting authorities, not something differing from both. I hold none of them to be infallible, except really General Councils of the Universal Church. If any Council claims to be that, I claim only to examine that pretension. If I think the claim established, I bow *implicitly* to its decree. As to all others, I claim to examine both the extent of their authority, and the accordance of their decree with Scripture. But if the authority be high, I ought much to distrust, and I should, I hope, practically distrust my own judgment altogether. As to individuals differing, there is this also further to be observed. The Church of the country in which they dwell has authority to pronounce her decision between them, to be obeyed under the penalty of exclusion from her communion. Secondly, the differences between independent Churches stand upon the same principles, and are to be settled in like manner. The appeal is to the opinion of the whole Church, to be collected from general practice and the voice of antiquity,

but with the right of judgment, to be exercised by a wise and prudent and sincere Church, in like manner as by a wise and prudent and sincere man. I presume the Church of England doubts, as I do, whether it be *clearly made out* that any Council, save that presided over by St. James, ever was really a General Council of the *whole* Church, so as to be infallible. But I doubt not that she holds, as I do, that she is practically bound to the *quod semper quod ubique quod ab omnibus* of antiquity, and that the nearer any authority or any Council approaches to that, the more weight ought its opinion to receive.

A Church erring may, by the independent action of any other Church, be excluded from communion with it. But no one branch of the Catholic Church can exclude by its command one Church from communion with any other branch of the Church Catholic, *except its own*. If there were a real General Council, such General Council might exclude the erring Church from all other communion, just as any national Church can exclude an erring individual from communion with *all* other members of its body.

Thus, therefore, I answer your two questions; and I hope I leave you in no mistake as to my views on the subject. *

To another friend, who expressed himself as grievously dissatisfied by the submission of questions of doctrine to the decision of a lay tribunal of the State, as he conceived to have been the case in the notorious case of *Gorham v. the Bishop of Exeter*, he writes thus :—

I cannot persuade you, I find, to adopt a distinction, which to my understanding is quite clear, between a determination *directly* on doctrine, affirming, denying, or qualifying it, and a determination of a *cause* which incidentally requires the examination and ascertainment of what a doctrine is, *as expressed in a form of words which the Church must necessarily use, and which may be therefore ambiguous, or clearly expressed*.

The former is the province of the Church : the latter of a judicial tribunal.

Suppose an estate were left to you on condition that a certain sermon lately delivered by you was correct in doctrine, according

to the Church of England. Surely you would not say that the bench of bishops should put you in possession of the land: though their evidence and opinion would no doubt be good guides for a judge and jury. After all that is said, it must be admitted that laws must be in *words*, and those words must be construed, in order to determine an infringement of the law, or to give a privilege to a person who obeys it. That is the best tribunal which most correctly can construe the words. It is different with the tribunal which *makes* the laws. That is the best in which God's Holy Spirit assists, and has promised to assist the lawgiver. Moses, by inspiration from above, gave the law from Mount Sinai, but he was not the sole person to construe it when given. You see, therefore, that I differ from you only in thinking that there is no objection to the ecclesiastical tribunal deciding on the *causes*; though convocation ought always to be ready to make, and in case of erroneous construction to *declare for the future*, the true construction to guide the tribunal. This seems to me to be the true theory. But do you think that purely ecclesiastical tribunals thrive by comparing cases of their decision with Gorham's? None should at all events decide who are not acquainted with the principles of justice between man and man; for justice is an art, believe me—the art of adhering to general rules, instead of following the imaginary particular justice of each case, which, in ninety-nine cases out of a hundred, is to follow prejudice and inclination. Why will the clergy hunt after unattainable things when there is a plain course before them, and practical enough, if followed,—the limited but rightful use of convocation, to be called together to determine important cases when required, but not to meet like a clerical debating society on all frivolous occasions. Such a point might be worth fighting for, and is not a hopeless fight, I believe. But for the Church to be convulsed because the Judicial Committee may have made a mistake about Mr. Gorham, seems to me very unwise.

* * * You suppose the case of a clergyman denying or impugning our Lord's divinity, and ask whether, it being a question of doctrine in the Bishop's Court, it ceases to be one in the Privy Council? Of course it does not; but is it clear that you have not begun with a *petitio principii*? Is it a question of

doctrine necessarily in the Bishop's Court? The question there is, whether A. B. is to be punished by deprivation or otherwise for heresy? Has he committed it? What did he say? In what words? Are they to be understood literally? Were they qualified by the context? &c. &c. No question of doctrine is directly here; but I will not, of course, doubt that here incidentally doctrine must be appealed to. But how? In a case of crime you must show me the law—a written one—in what words framed; for a judge construes, not makes, the law. It is not what is the true doctrine, but in what form of words has the Church embodied it? That is the transgression, to disobey that law. The Church which made the law declared what the doctrine was. If insufficiently, let her declare it more clearly. So it has been always. The Apostles' Creed, explained in more stringent words by the Nicene, and again by the Athanasian. But surely you would not have *punished* a man who had infringed the implicit meaning of the first, but had adopted the explanation of the second, *when given*. Nor would you have expected a judge, *before* the Athanasian Creed, to have punished a man for infringing it, if he obeyed it after its promulgation. Nor would it have been right for a judge, before a council of the Church had spoken, to have construed ambiguous words according as he himself was Arian or Athanasian, but simply to have declined to act at all against the accused, if the case were not clear. I cannot conceive what there is in all this which requires the decision of an ecclesiastic rather than a layman. There is much that requires skill and knowledge. The ecclesiastic may, for aught that I know, be the best. If he be, he should be appointed to decide; but you will, I hope, forgive me for thinking that it is *childish* to say that Sir H. J. Fust is *fit* in Doctors' Commons, where he is appointed by the archbishop, but *unfit* if he sits in the Privy Council, which he often does. The same man, sitting on the same question, but in a different place!

I end as I begun. Had you simply insisted on the clear defect of a judicial tribunal, unaccompanied by a legislature to correct its decisions in future, I should not have a word against it.

* * * * *

One more letter, out of the many which exhibit him, about this period, in the light of a counsellor of anxious minds, may be inserted, before passing on to other matter. It will itself sufficiently explain the object with which it was written.

MY DEAR FRIEND,

You ask me what is the interpretation of the obligation imposed on the clergy by the 36th Canon, and the Oath of Supremacy. Your question relates only to the Queen's acting judicially in heresy, and matters purely spiritual. I answer thus :—

The 36th Canon declares that the King's Majesty is, under God, the only supreme governor of this realm, and of all other his Highness's dominions and countries, as well in all spiritual and ecclesiastical things and causes as temporal. This is the first part.

The second part of the Canon proceeds in terms to deny any foreign jurisdiction of prince or prelate.

The Oath of Supremacy first denies that princes excommunicate may be deposed or murdered by their subjects—I don't suppose you doubt about that—and proceeds like the Canon to deny all foreign jurisdiction.

You say you hold (I quote your own very words) that the final judicial sentence in interpretation of doctrinal definitions, and in applying discipline purely spiritual, is inalienably, by the law of Christ, in the Church alone. I don't see how that at all affects the question as to the putting to death princes excommunicate, or deprived by the Pope. Nor can I perceive that the final decision of the Church alone must, in England, be pronounced by a foreign jurisdiction. I shall therefore not discuss those matters. But the first part of the 36th Canon is very well worthy of being considered, and, in my judgment, it is susceptible of a clear and simple explanation. It states that the King's Majesty is supreme governor in all spiritual and ecclesiastical things and causes, *as he is* in temporal things and causes.

Now, *how* is he supreme governor in temporal matters? Our question, it is to be observed, relates to his supremacy in judicial

proceedings alone. He is so, very clearly, by his judicial tribunals alone, established either by common law, the universal and immemorial custom of the realm, and therefore implying an universal consent of the nation, or by statute law, which implies an actual consent of the nation, given through its representatives in Parliament. The King, personally, as supreme governor in temporal matters, has no jurisdiction whatever in judicial proceedings. He judges by his tribunals—they are established by the law of the land.

So also does the Canon call him supreme governor in matters spiritual. In those also he is to judge through his tribunals. And these are established either by ancient custom, the common law of the Church—which suppose an original authority canonically given by the Church—or established in more modern times by the Crown, with the assent of convocation, its ecclesiastical parliament. The aid of the civil parliament is added to make these regulations bind the laity, and to enable them to be enforced by the civil power. But they bind the clergy by their inherent power over their consciences, till changed by convocation itself.

In this only way is the King supreme governor in matters spiritual, when he acts, or rather is supposed to act, judicially.

In truth, it is the Church, speaking through her tribunal, which really so acts. And she does so from necessity. It would be absurd to refer each individual case to convocation, or a provincial synod. The King, as supreme governor, carries into effect for her the judgments pronounced by her tribunals.

This is all that you are bound, as I believe, in your conscience, to hold. You must not, so long as the canon and oath remain unchanged, hold that you acknowledge any foreign jurisdiction (save that of the Universal Church in General Council assembled) as having any authority in matters spiritual here.

You must not hold that kings excommunicate by the Pope may be murdered lawfully by their subjects; and you must admit that the King acting judicially through his properly constituted ecclesiastical tribunals is to be conscientiously obeyed, as the supreme governor, in that sense, of the Church.

I cannot see how this in good sense differs so as to be contra-

dictory from what you say you hold. It seems to me that both opinions may well stand together, and that an honest and conscientious man may safely hold both.

If I have rightly understood what you do hold, this is my opinion. But your expressions are rather vague. *In generalibus latet error.* Half the disputes of the world arise from imperfect definitions.

May God grant that this may tend to satisfy your scruples.

* * * *

Before leaving town for the Summer Circuit of this year the duty devolved upon him of presiding at the July Sessions of the Old Bailey, where the case of Pate, the man who struck the Queen on the forehead as she entered her carriage, came before him for trial. The plea of madness being set up for the defence, Baron Alderson took occasion, in summing up to the jury, to make a careful explanation of the law upon that point:—

In the first place they must clearly understand that it was not because a man was insane that he was unpunishable: and he must say that upon this point there was generally a very grievous delusion in the minds of medical men. The only insanity which excused a man for his acts was that species of delusion which conduced to, and drove a man to commit the act alleged against him. If for instance a man, being under the delusion that another man would kill him, killed that man, as he supposed for his own protection, he would be unpunishable for such an act; because it would appear that the act was done under the delusion that he could not protect himself in any other way, and there the particular description of insanity conduced to the offence. But on the other hand, if a man had the delusion that his head was made of glass, that was no reason why he should kill another man, and that was a wrong act, and he would be properly subjected to punishment for that act. These were the principles which ought to govern the decision of juries in such cases. They ought to have proof of a formed disease of mind, a disease existing before the act was committed, and which made the person accused incapable of knowing at the time he did

the act that it was a wrong act for him to do. This was the rule by which he should direct them to be governed. Did this unfortunate gentleman know that it was wrong to strike the Queen on the forehead? There was no doubt that he was very eccentric in his conduct, but did that eccentricity disable him from judging whether it was right or wrong to strike the Queen? Was eccentricity to excuse a man from any crime he might afterwards commit? The prisoner was proved to have been perfectly well aware of what he had done immediately afterwards, and in the interview which he had since had with one of the medical gentlemen he admitted that he knew perfectly well what he had done, and ascribed his conduct to some momentary uncontrollable impulse. The law did not acknowledge such an impulse, if the person was aware that it was a wrong act he was about to commit, and he was answerable for the consequences. A man might say that he picked a pocket from an uncontrollable impulse: and in that case the law would have an uncontrollable impulse to punish him for it.

It is possible, that in the opening of these remarks he had in mind the medical testimony tendered upon another trial at which he assisted—that of Oxford, charged with shooting at the Queen and Prince Albert, in the summer of 1841—in support of the same plea; by which an attempt was made to lay down the doctrine that the mere enormity of a crime, or circumstances of an unusual and desperate character, were to secure a prisoner's acquittal by being taken to establish his insanity. Not only was this position expressly repudiated by Lord Denman, in summing up, but in the course of the trial it was not allowed to pass without lively interpellation on the part of Baron Alderson, who after closely questioning the chief medical witness as to the circumstances on which his opinion, as a physician, of the prisoner's insanity was grounded, and receiving in answer a mere array of the details of the attempt, forcibly observed that while symp-

toms of insanity *were* medical questions, all the circumstances mentioned involved merely legal questions, which a doctor was not more able to decide than any other man.

The later trial—unlike the former—ended in a verdict of guilty, and Pate was sentenced to transportation for seven years—a sentence the substantial severity of which must have been overlooked by those who criticised it for the omission of the floggings mentioned in the statute under which the prisoner was indicted, and which were dispensed with in consideration for the feelings of his family.

The following letter was written in answer to an invitation requesting him to attend an educational *soirée* given in the year 1851, that of the Great Exhibition, and serves to indicate the views he entertained on the subject of national education:—

* I am much flattered by your wish to see me at your conversazione, though I regret I cannot come to it. * * *
With reference to the general subject of education, I cannot say I like compromises. On such points I grieve over our unhappy divisions, and not the least that they are the real obstacle to education. But I accept them as a *fait accompli*, and try to make the best of the case. I hope I have a true catholic toleration for all who conscientiously differ from me, knowing how little right I, or indeed any man has to set up for being infallible. But I must act after all (and I assure you I sincerely wish others to do so too) according to my own convictions. These lead me to educate others, as I believe myself to be bound to do, in the vital truths which I myself accept, and in no others. Everybody will perhaps say the same, but they will add, 'Give secular instruction in common.' I believe that to be impossible, because all learning and all science may be so taught, and in fact must be so taught, as to include in it some perversion or true teaching of religion. An unbeliever teaching a boy arithmetic may insinuate that the doctrine of the Trinity in unity is not

true. And geology may be taught so as to throw doubts on the Bible. It is unnecessary to multiply examples. I look a great deal more to the opinions of the person teaching than to the things proposed to be taught; for education is the bringing up a child as a responsible being to God and to society, and in most cases the boy follows the master, as I believe, both for good and for evil.

I prefer therefore to continue as I am, doing in my own private sphere the little good I can. * *

In December, 1851, the startling intelligence of the *coup d'état* at Paris put a summary end to a proposed excursion to that city during the Christmas holidays.

I was going there [he writes to Mrs. Opie], but of course do not dream of it now. They seem in a bad way. A nation so unfit for freedom—if that be freedom which requires those who love it to be *first* wise and good—does not exist. The Celts seem to me to be ‘a bad lot.’ I suppose it will end in Louis Napoleon’s becoming dictator, and then (not unlikely), being shot by an assassin, and the game will begin over again then. The fear is, that the Prætorian guards will make him go to war for their own profit. It is a fearful crisis, I think: and the best that can happen will be for him to be made King or Emperor, and hold his ground in spite of conscience, oaths, and faith which he pledged to the Republic.

At this time of the hurricane, our Ministry are to bring in a new Bill of Reform. Wise people! This shows how silly it was to pledge themselves months ago, when no man can tell what may happen from day to day.

We (the Judges) are all trying to work out the not very wise bill enabling plaintiffs and defendants to swear for themselves. A great deal of perjury is the result, but I do not think much will be punished. Juries are not a proper tribunal for such matters, and therefore the experience of its working well, if it did so, of which I am not sure, in the County Courts, was fallacious. There, in ninety-nine cases out of one hundred, the *Judge* decides. We are to work *in all cases* by a jury. Now, uneducated minds seldom like to doubt; and so a jury, if the plaintiff

swears black, and the defendant white, will always find a verdict in favour of the one or the other, when in truth they ought to find, in a multitude of such cases, that they do not know which to believe. This would be the real truth, and the philosophical view of these cases. And in such finding, it would be easy to determine the cause by saying that the party having the affirmative has failed to prove it. I suppose that in time we shall work it into their heads, but I think all the world is not awake as yet to this conclusion.

In the spring of 1852, for the last time, he chose his favourite circuit, the Northern; and on this occasion the choice entailed no untoward consequences, as it had two years before, to his health, from the heaviness of the work.

In the following letter to Mrs. Opie, he relates the first appearance in the criminal calendars of the since notorious garotte:—

We have had a new and most prevalent crime of robbery, committed after the way of the Thugs in India, which infests the great manufacturing towns of Yorkshire and Lancashire. Three men, generally with a female, who acts as jackal, lie in wait for travellers after dark. The woman accosts the unwary victim—suddenly out spring the men, two seize his arms, one his throat, so as to strangle him, that he may not call out for help, and then the other two rob him, and all run away, generally leaving the victim insensible, and often all but dead. If I have tried one, I have tried twenty such cases, and my brother judge as many at York. We have invariably transported them all—men and women too—and I mean to apply to the Government to send them off at once across the seas, as a terrible example, to try and prevent the crime spreading.

We are going to dine and sleep at our Roman Catholic sheriff's house. We have had no difficulty whatever with him on the question of chaplain. He appointed, at my desire, when at Lancaster, a clergyman to preach before us, and was quite relieved when I told him that he had no right to appoint a

chaplain, properly so called, but only a preacher before the judges. Now such a preacher must be of the Established Church. It is not correct to say that the chaplain is the chaplain of the judges, who are of the Church of England; for the judges may be Romanists, or Dissenters, or Quakers, or Jews, and so may the sheriffs; but if it be true, as it is, that the duty of the sheriff is merely to *select out of the Established clergy a person to preach before the judges, when they go to the Established Church*, then the religion of the judge or sheriff has nothing to do with it. Chaplains, legally so called, can only be appointed by persons named as having a right to appoint in an Act of Parliament. Bishops, peers, privy-counsellors, judges, &c., are named, but sheriffs are not; therefore they cannot appoint a chaplain. No doubt, in common parlance, any one is called so who says grace or reads prayers in a private house: and *such a chaplain* a sheriff or any one else may have; and in old times, no doubt, Parson Supple was sheriff's chaplain to Squire Western, in this sense, but in no other.

He had, in the Easter Term of this year, to deliver judgment in the memorable case of *Miller v. Salomons*, in which he concurred with the majority of the court in thinking that the words, 'on the true faith of a Christian,' were a substantive part of the oath of abjuration, and not merely part of the ceremony for administering the oath.

His theory as to the introduction of these words in the oath is curious:—

They are not found [he says, in the course of his judgment], in that prescribed in the reign of Elizabeth, but are first found in 3 Jas. I., c. 4, which was passed upon the discovery of what is called the Gunpowder Plot. It is a curious fact—only lately brought to light by the publication of a MS. from the Bodleian Library at Oxford by Mr. Jardine—that one of the main proofs used by Lord Coke, when he laid that case before the jury, was the production of a little book found in the chamber of Francis Tresham, one of the conspirators mentioned in the Act, called 'A Treatise on Equivocation.' This treatise, corrected in the

handwriting of the Jesuit Garnet, and having the imprimatur of Blackwell, the then Arch-priest of England, discusses the question how far a person called upon, as he thinks unjustly, to make a declaration or promise, or to depose or swear to a fact within his personal knowledge, may lawfully equivocate, by using ambiguous words, or reserving mentally a sense of the words used different from that outwardly expressed by him, without incurring the sin of lying or the guilt of perjury. The question is there resolved in the affirmative,—that he may lawfully do this; and among other propositions, it is affirmed that even if he be required by the form of the oath tendered in terms to swear ‘without equivocation or mental reservation,’ he may still equivocate or mentally reserve, without danger to his soul. But in that treatise there is one exception to all this. No person is allowed to equivocate or mentally reserve, without danger, if he does so, of incurring mortal sin, where his doing so brings apparently his true faith towards God into doubt or dispute with others. Now this treatise being before the Government of King James the First, and in the hands of his Attorney-General, and used at the trial of the Gunpowder Plot, we find in the same year, 1605, that in a statute enacted mainly with reference to the same plot, these words, ‘upon the true faith of a Christian,’ are for the first time added to the oath of obedience then framed, and for the obvious purpose, as I think, of preventing effectually all such equivocation, by conclusively fixing a sense to that oath which by no evasion or mental equivocation should be got rid of, without, even in the opinion of the Jesuit doctors themselves, incurring the penalty of mortal sin.

After going on to point out that although the fact referred to was a curious confirmation of the view which he took of the importance of the words, it was by no means *necessary* to his opinion, which was in the main based on the uniformly express and definite language used by the legislature with reference to the oath, he concluded with the following observations, often quoted in the course of the debates on the admission of the Jews to Parliament:—

I do most seriously regret that I am obliged, as a mere expounder of the law, to come to this conclusion, for I do not believe that the case of the Jews was at all thought of by the legislature when they framed these provisions. I think that it would be more worthy of this country to exclude the Jews from these privileges (if they are to be excluded at all, as to which I say nothing) by some direct enactment, and not merely by the casual operation of a clause intended apparently in its object and origin to apply to a very different class of the subjects of England. I regret also that the consequences are so serious, involving disabilities of the most fearful kind in addition to the penalty sought to be recovered by this action, and in fact making Mr. Salomons for the future almost an outlaw. It is to be hoped that some remedy will be provided for these consequences at least by the legislature. My duty is, however, plain. It is to expound, and not to make the law—to decide on it as I find it, not as I may wish it to be.

The progress of law reforms introduced during the session of 1852 by the Government of Lord Derby was watched with interest and cordial satisfaction :—

After all [he says, writing to Mrs. Opie on this head] this session of Parliament, and this dubious state of government, will carry out some of the best measures ever brought before them. The Amendment of Chancery and Common Law will pass, I am glad to say, by common consent, with debate as to details. Many of these measures are spoilt by pragmatical men in the House of Commons making amendments which do not harmonize with the rest of the Act. The only sound mode of doing these things is to debate the general principle, and to leave the details to the professional men.

This result this year is to be attributed to the little time and the anxiety to dissolve by which both sides are now animated. The New Zealand Bill also is a great step for colonial self-government, probably wanting future amendment, but still a good step in advance on a good road. Weak governments are not altogether, though in some measure, evils. These are their advantages. Their fault is want of power of resistance when

the real improvements are exhausted, and men still crave more alterations, as they almost always do. * * * We seem (I rejoice to say) to have done with protection for your and my time. Possibly it may turn up again in my children's time. You and I saw its beginning in the Corn Law Riots of 1815, when Lord Ripon, then Mr. Robinson, brought it in for Mr. Coke and the late Sir Henry Parnell, to improve agriculture, and they declared that under 80s. a quarter *corn could not be grown*. Now we do grow it at 45s. Such was the wisdom of our bucolic ancestors. I believe most of my agricultural friends believe these Corn Laws to have come in with Magna Charta; whereas I saw their birth, and shall be a merry mourner at their burial. They always stare, after their manner, when I tell them so.

As soon as the labours of the Midland Circuit left him free to the enjoyment of the Long Vacation, for which he entertained, as he expressed it, 'the most religious reverence,' he hastened to exchange the toils of office for the breezes of the Channel. As has been mentioned before, of all modes of recreation, none afforded him so much enjoyment as that of yachting; and in the course of this summer (1852) he extended his cruises along the south and south-west coast, as well as the north coast of France, ending by establishing himself, for the last time, in his old quarters at Lowestoft for the autumn. He was attracted in that direction by the recurrence of an occasion at which he had for many years made a point of being present, 'the Norwich Musical Festival.' To no vacation hours of this or the following year, when he fixed himself for yachting purposes in the Isle of Wight, did he recur with more unfeigned satisfaction than to the many happy ones spent on the waters of Solent or Torbay.

The year 1853 was destined in its passage to inflict upon him a serious measure of family loss. Commencing with deep anxiety at the malady of his only surviving sis-

ter, it set in sorrow for its fatal termination. And as one who clung the more fondly, as age advanced, to the ties of kindred and the associations of early life, it was with a feeling of deepening sadness that he learnt, almost at the same time, that she with whom he had for so many years maintained a constant interchange of thoughts and ideas, the gifted correspondent of so many of the preceding letters, had finally succumbed to the infirmities of advancing—but honoured—years.*

An occurrence of this autumn—the suspension and dismissal of Mr. Maurice from his Professorship at King's College, on grounds of heterodoxy on a certain point, while it awakened at the time his warm interest, from his acquaintance with, and respect for, the individual impugned, merits notice as an incident which serves to place his conduct and views, with reference to a certain class of subjects, in its true light. Without pronouncing one way or the other on the particular controversy in question, he was led to be of opinion that, at all events, the offending Professor had been harshly judged; and once satisfied of this, as a systematic labourer for peace, and, above all, for toleration on religious matters, he entered into the discussion so far as to endeavour, by communication with the friends of Mr. Maurice as well as the members of the Council, to bring about an amicable arrangement. Efforts so directed by him and others were, unhappily, unattended with success. But the interest evinced on this occasion, and acknowledged by one of the Professor's most intimate friends, in a letter from which an extract is given a little further on, marks not only how readily his sympathies were enlisted in behalf of any one whom he conceived to have been treated with a measure of injustice, but also how averse, on questions from their very

* Mrs. Opie.

nature open, the bent of his mind was to what is stigmatized, in the same letter, as the mischievous tendency to over-dogmatize in theology.

Though urging what appeared to him unsatisfactory in the treatment of the question by Maurice, there was, doubtless, much in the following in the spirit of which he concurred. Indeed, the remark on what constitutes the really valuable quality in a teacher, resembles an expression of his own in a letter on the subject of education, which has been already inserted in these pages.

I am very thankful [says the writer] for your letter, and for the interest which you, like Bunsen, take in this troublous matter.

As to your remark that Maurice's destructive power is greater than his constructive, we must bear in mind that he has learnt from the whole history of the Church and of theology, that one of the most mischievous tendencies in theology as well as in philosophy has ever been the fondness for systematizing and dogmatizing. Hence his method has been like that of Socrates, who aimed at the like object of delivering the human mind from the bondage of immature propositions, and who has been in like manner charged with leaving his pupils in want of definite systematic knowledge. Herein his method, like the Baconian, was the reverse of that of Aristotle and the Scholastic, and tended towards the emancipation, instead of the enslaving, of thought and truth. This, too, seems to me to be the distinctive principle of our Church—as manifested in her Articles—as compared with the Tridentine Canons on the one side, and the Westminster Confession on the other. She was providentially led to take this course of practical wisdom, and has thus become a subject of reproach to the servile cravers after some peremptory authority. But the truly precious quality in a teacher seems to me, not so much the faculty of imparting a large mass of information ready cut and dried, as that of inspiring a love of truth with reference to his peculiar department, and of inculcating the right principles and method of seeking after it. This will produce living knowledge instead of dead: and thus I have been told on good authority that in examinations for orders, the can-

didates from King's College have been noticeable for the greater largeness of their theological views, and by the higher earnestness with which they look forward to their ministerial office.

In this then, as in every other theological controversy in which circumstances led him to take an interest, the motive, to those who had the closest opportunity of judging of it, would seem to have been, not a systematic support of any particular party or views, but some strong personal feeling. It might be—it often was—one of earnest friendship which aroused him 'to think out,' so to say, a subject, and endeavour by his counsel to counteract the doubts and anxieties of some less vigorous mind. To a feeling of this kind may be attributed the *Letter of a Layman*, written during the heat of the Gorham Controversy, the first of three to which the same unhappy discussion gave rise. The note prefixed to it—'The following was, in 1850, addressed to a friend then about to leave the Church of England, and is now printed at the suggestion of some persons who think that it may perhaps be useful to others similarly situated'—sufficiently indicates its origin and purport: and more than one expression of thankfulness from persons to whom its pages were of service, in the removal of previously entertained doubts, was a real satisfaction and reward for trouble unhappily, in the first instance, expended in vain. The testimony of so learned and distinguished a man as the late Archdeacon Hare to the value of the *Letter* to the Bishop of Exeter, deserves to be recorded:—

It is [he says, in a note to a Charge delivered to his clergy in 1851,] of itself enough to prove of what inestimable importance it is that an Ecclesiastical Court of Appeal should contain a large admixture of legal minds. In opposition to all the persons who, with the Bishop of Exeter at their head, raised such an outcry about the evils brought on our Church by this judgment, the author shows with the utmost clearness in a dozen

pages, first, that the decision, standing alone, scarcely affects the law of the Church, inasmuch as it might be overruled to-morrow by another decision of the same court; and, secondly, that the decision itself, whatever may be its authority, goes no further than to cover that form of opinion which the court has given as the summary of Mr. Gorham's doctrine, which summary contains nothing incompatible with the teaching of the Church. To the argument, as here stated, I see not how any intelligent person can refuse his assent.

And in a letter addressed to the author himself he begs to express his gratitude for a statement so excellently fitted to set people right in a matter on which such numbers were running wild—adding his belief that this had been its effect in many instances.

Or else—as in the case of Mr. Maurice, and others of similar notoriety—it was what with him really amounted to a personal matter, the sense of an injustice having been committed, and the anxiety to uphold the object of harsh or unfair treatment, which induced him to volunteer his support, irrespective, to a great degree, of the views or practices of the person assailed. Such a course, by a not unnatural confusion, often lays a man open to the supposition of an active approval of the particular tenets of a party or individual whom another motive may have thus led him to support, and the more so, that to a certain extent their views may assimilate. But this, one in whose bosom the love of justice was so deeply rooted never paused to consider. It was a physical impossibility for him to sit down and calmly watch an act of tyranny or wrong-doing: it would intrude upon his thoughts, and fret and vex him to an extent often injurious to his bodily health. But for all that, there might be, and often was, much in the opinions or conduct of those in whose behalf he would strenuously interfere, in which he had no in-

tention whatever of thereby expressing his own agreement, nay, would often most earnestly deprecate. His own impulse, indeed, was to concern himself far more with the practical than the doctrinal side of Christianity; and for his religious views, they are rather to be gathered from the reiterated expression of his own inmost sympathies—from the tenor of his secret meditations—from the outline assumed by the great truths of religion in his private thoughts—than from the part he may have been led by circumstances to take in any theological controversy. These are indeed the true criteria; and these, while they indicate unmistakeably an earnest and reverent holding of all vital points of Christian doctrine, are characterized no less explicitly by a spirit of largeness and toleration, and, whatever his own convictions, the habit of respect for the opinions of those who conscientiously differed from himself. How little, on the one hand, in accordance with his own sense of propriety were the ritual excesses in which a small section of English Churchmen has seen fit to indulge, and on the other, how abhorrent to his nature was the spirit of bigotry and prejudice which could resolutely close its eyes to any good which it did not itself dictate, may be gathered from the following extract from a letter written a few years before his death, upon the occasion of Miss Sellon and her sisterhood at Devonport becoming the subject of inquiry, as they had been of a sharp local persecution:—

I agree with your admiration of these women *up to a certain extent*; but think they did not sufficiently attend to St. Paul's advice—'Giving no offence in anything, that the ministry be not blamed.' By what I call follies, and what they themselves think unessentials, they have raised this storm. Nevertheless, I do detest and abhor with all my might and main the abominable persecution. Why not look at the good done, and for the

good's sake pardon what even bigotry, I should believe, can hardly put higher than pardonable absurdities? Let us, however, take, if we can find it, the good in all (even in these people of whom I have been speaking), and show our catholicity by our love of all that is good everywhere.

This earnest desire for upright and impartial dealing between man and man, this strong natural repugnance to anything which tended to exclude any individual, whatever his position, from the consideration to which he was by law and right entitled—a quality so excellently fitting him for the post which he occupied—becomes, perhaps, a more distinctive feature of character when taken in connexion with the ardent love of truth by which he was animated. We not unfrequently see those around whose nice appreciation of justice with regard to persons awakens our admiration, devoid apparently of any great anxiety in behalf of, or value for truth, as truth. To such persons the subject of this memoir presented a marked contrast. Not only did he recoil sensitively from injustice in every form, but in the exercise of his reasoning faculties it was vital to him to penetrate to the truth. Probably the circumstances of his life and judicial employment had an influence on his character in this respect, and so long a period had not been spent in sifting doubtful evidence, and feeling after the real fact in the midst of error, without adding to the strength of an instinct deeply implanted at the outset in his nature. But in all relations of life, and in every branch of inquiry—most of all, the highest—it was his conscientious endeavour to arrive at the truth. It was impossible to be in his society and remain insensible to this. Especially it pervaded his conversation, when he would gradually glide from the surface of things to topics more congenial to his own earnest spirit, and proceed to bring to bear upon that selected all his

vigorous powers of understanding, turning the question this side and that, viewing and reviewing it from its different aspects, searching and probing, and breaking up the doubts or difficulties with which it was environed, until he had succeeded in extracting, as it were, the kernel of truth, upon which he had seemed from the outset to have had the eye of his mind fixed, with a steady intensity, which no intermediate mass of confusing matter availed to divert from its aim. But when the proper limit of human reason was reached, further inquiry was at once cheerfully abandoned. 'In all things (to quote his own words) within our powers of mind, we have reason to guide us, and we ought to follow it; and even with respect to revelation we ought to use reason to ascertain whether it be really a revelation from God—but not any further.'

The following extracts are derived partly from letters, and partly from miscellaneous jottings made at various times, as each subject happened to strike him, purely for his own satisfaction. Most of them bear the date of Sunday, and owe their origin, in some sense, to that circumstance. It often happened that some incident of the day, a passage or expression in the service, or a remark falling from the preacher, awakened in his mind a train of thought, which either found utterance in conversation or a letter, or was merely recorded in brief on paper. With thus much of explanation as to their fragmentary form, the present is as suitable an opportunity as any for their introduction:—

Sunday.

As I was sitting in church to-day, and hearing the first lesson, it struck me that a good sermon might be preached on the text, 'Are not Abana and Pharpar, rivers of Damascus, better than all the waters of Israel? May I not wash in them and be clean?' I think this speech of Naaman's a capital peg to hang a discourse on *Man's* folly in thinking to compare his own mode

of salvation with that appointed for him by God. We are continually saying, 'Are not good works, &c. (our Abana and Pharpar) a better ground for God's mercy than the blood of Christ (the Jordan in which we are ordered to wash) ?' Might not this be properly set forth, and amplified ? * *

Sunday.

I was thinking just now of the text, 'If ye be risen with Christ.' This passage struck me forcibly as showing what St. Paul calls and thinks spiritual life alone to be really life. All mere physical life he calls *death*. Christ holds our life for us (if we have it) in the bosom of God. And thus we are united, the finite with the infinite—the creature with the Creator—man with God. The link is entirely spiritual, and must be communicated to us ; we cannot get it ourselves. Whether we get it in baptism, or by what some call regeneration, it must be in the nature of things God's mere gift and only doing. I think we have good ground for thinking we get it by baptism ; but what nonsense people talk who give reasons why we cannot so get it, when, after all, our getting it at all is necessarily a miracle. Why explain or argue about a miracle ? It is only a question, what is written—how readest thou in these cases ? Am I not right in this ? and ought not the conclusion to be, 'Let us examine humbly what is written, and believe implicitly what is clearly revealed. *But mind*, I confine this to what is beyond human reason, which includes all man's relations with God. In all things within our powers of mind God has given us reason to guide us, and we ought to follow it. And even with respect to revelation, we ought to use reason to ascertain whether it be really a revelation from God ; but not any further. * *

Sunday.

How I grieve over a man who like —— sacrifices his own usefulness, by praising, and going out of the way to praise, the Papacy. I don't want him to abuse it. I should disapprove of that also, for it would, to the extent to which many carry it, be unjust, and I do cordially hate injustice. But why not set himself to raise his own Church by a due attention and *wise* recommendation of its forms and decent rubric. If it be true that

these forms have been for years neglected, let the public be brought back to them ; but to do this effectually it must be done gradually, and without shocking prejudices. Let your aim be, if you will, to do the whole, but not the whole at one time. The people are children, and must be treated so, and begin with their letters, then go on to small words, and so on, till they read with facility. Such men as —, injudicious advocates, send us backward for a century. Laud's premature ritualism condemned us to the Puritans, and was followed by the humdrumism of the revolution. We are emerging again into light. Don't let the Lauds of the present day send us back into darkness once more. * * * *

I groaned in spirit to-day over a Church of an opposite character, yet with a very worthy pastor, who in the cholera of 1831, when all ran away, stood by his flock, and personally visited every case, thereby rallying others round him, and so the plague was stayed. Yet nothing could be duller than the congregational worship. And why? Because (like Popery, for extremes usually meet) there was no *common* prayer. The minister read, the clerk responded, the congregation sate looking on and were silent. — and I, however, did our duty by responding and singing audibly. I fancy I see you smiling ; but I thought it just possible that they might follow the example of the judges, if not now, yet in future, and was anxious to show by this means that I thought the *congregation* had something to do with it. If I saw the clergyman I would tell him to preach a sermon, and ask the congregation to try the effect of audible responses. It makes the service striking and inspiring. It ceases to be a dull form, and becomes a lively reality. * *

I don't mean to dine with S—— on Sunday. *Nobody*, but certainly no clergyman, should give dinner parties on Sunday. I quite agree with those who avoid travelling or labouring either by self or servants on that day. It is too great a blessing to me to be at rest, for me not to wish others to have it also. Not that I feel the slightest harm in reasonable and innocent recreation. The evening walk for the tradesman or mechanic, the enjoyment of the open air and the green fields to the occupant of the close and confined workshops, seem to me not only

not wrong, but deserving of positive *encouragement*. I would act upon the declaration that the Sabbath is made for man, and not man for the Sabbath. God's service first—man's innocent recreation next; both are consistent with each other—both to be the object and mode of passing that day. So may it be a precursor of the everlasting Sabbaths of Heaven, which surely cannot be either tedious or fanatical, but which dull fanatics make people dread rather than desire. * * * So — wishes me to write on Divinity. I often think I will get a book, and write down from time to time my thoughts on such subjects—I mean as detached thoughts, without connexion. One good would arise—that one should compare one's mind of to-day, or last year, with that of preceding years, which might be of some use. * *

Sunday after Ascension Day.

Just back from church, where we had a capital sermon on 'Set your affections on heaven.' I quite agree that a great many very good people are not heavenly-minded. We live too much in action, and too little in contemplation, and go through the world in a bustle. I could not help turning in my mind how this conversation in heaven was the true cure for all earthly bereavements, remembering the P——s. Let me suppose them, with their lost children, to have lived, having their conversation in heaven, and, as the Collect of to-day says beautifully, 'continually in heart and mind thither ascending,' and what is a separation then? It is only that one of the party is in spirit and reality gone before, and the rest are dwelling in heart and mind still with the departed; just, so to speak, as I am now dwelling and conversing with you at St. Leonards, being myself left behind in London. There is, it is true, no *ascertained* communication between the two worlds; yet who shall say that there is none at all? I love to believe otherwise, and to believe that the dear ones lost on earth may be contemplating me as I remember and think of them; and so we may be enjoying a communion which, if I were worthy enough, might be a communion of saints. It is a strong motive, however, I hope, for exertions to become less unworthy.

Whit Sunday.

What is it that really constitutes the one humanity of all the

various races of men on the earth? What is it that makes the Negro, the Carib, the Esquimaux, the Calmuck, the Hindoo, the European, one race? In the first place, they are all the original work of God, who breathed into man the breath of life, spiritual and sentient. Secondly, they are all derived from a common ancestor. Thirdly, they are all redeemed by one Saviour. These things make them one, however much some may be debased in intellect by centuries of neglect—however others may be changed in outward appearance by climate and vice. Whatever may be their religion, government, manners, progress in arts or sciences, and the like, still they are one, if they have the same breath of life, origin, and redemption, partaking of one common humanity which belongs to the whole race.

May not this be the key to open the question of the true unity of the Church? The Church is also derived from one common ancestor—the new Adam; she is derived through one common stock—the Apostles; she was created, so to speak, as on this day, by the in-breathing into her of the Holy Spirit, who then first dwelt, and still dwelleth, in her; and she has only one Head, Christ, though she consists of various members, some more and some less honourable in themselves.

Her common unity is thus wholly independent of external polity or forms. All who acknowledge Christ as the Head—all who derive their Christianity through the Apostles—all in whom the Holy Spirit dwells, producing the fruits of the Spirit, works of Christian love—all who on the vital truths of the Gospel agree in belief, are the one Church of Christ. Some, indeed—and these, I think, the wisest and best—derive their Christianity through a series of teachers ordained by bishops, those bishops being ordained for that purpose in succession from the Apostles. Others, less perfectly constituted, have derived their teachers from teachers originally appointed by persons having authority from the Apostles, but not through a succession of bishops. Others have still further departed from primitive order, and accepted teachers solemnly appointed after prayer, and according to what they believe to be the doctrine of the Apostles. But all—some more and some less—acknowledge the Apostles as the first and only accredited teachers under our Lord himself. Again, some

have a more perfect, and some a less perfect, form of ecclesiastical government, or a more pure or more debased ritual and external worship. But these things, though in themselves of the greatest value and importance, are but the accessories, and not the essence, of the unity of the Church. They are like civilization and barbarism to the unity of the human race. All who fall within the first category are branches of one Church, as all races of men, wise or debased, are branches of one common mankind.

It is better, no doubt, to belong to the best and wisest race of Man; so also it is better to belong to the purest and most perfectly derived and governed Church. But let us never forget that there is a most important duty arising from all this unity of Mankind. The enlightened members of the different races of Man should not, on becoming enlightened, desert their race, but remain, each man in it; remaining for the very purpose of bringing it to perfection. This is their plain and paramount duty. Its ultimate reward is the equalization and real unity of all the races in one body of perfect knowledge and happiness; and so should it be in the Church also.

* * * * *

And so the children are delighted with 'The Pilgrim's Progress'? I am not surprised, for it is a most amusing book for young people, being in the nature of a religious fairy tale. But its great merit is, that it is a really pious book. Kiss them both, and bid them pray that papa may, like Christian, be able to struggle through, and fight the good fight of faith, and that they may come after him like Christian's children. When one thinks how much is involved in this, it ought to make us pause and reflect seriously what a great deal is to be done—how much of evil thoughts as well as evil deeds to be got rid of, and in what way. There is but one; and I wonder how any one who fairly looks at himself, and his own unfitness, can hesitate about that. Here the Socinians appear to me to be sadly wrong, and I am sad to be obliged to think so, for there are many whom I respect living in that error. Yet it is surely not wrong to think that there may be mercy for them also, and that they may be saved by the atonement made for them, even though, from early education and habits, they thought otherwise themselves,

supposing they thought truly to the best of their belief and means of knowledge, and lived according to their belief in obedience to God's laws. I do think so, however. * * *

Thoughts on the Origin of Evil.

What a wonderful thing is the origin of evil! How is it reconcileable with the goodness of God? Perhaps it may help us, in considering the question, if we divide evil into two parts—physical and moral evil.

The former presents no great difficulty. It is consequent upon, and is, in truth, a punishment and remedy for, the latter. Labour, sickness, death, came after the fall of man, designed, apparently, to try us and bring us back to God. They are, indeed, fearful consequences of moral evil, but quite consistent with the benevolence of the Creator, and, indeed, similar in nature to the punishment of a child by its parent, which no one doubts to be consistent with the tenderest love and care for its welfare.

But the difficulty is with moral evil. What is moral evil? Is it not disobedience to the will of God? It is that, and nothing else. Now if God was pleased to make man, and constitute him a free agent, it must follow (since it is inconsistent with the perfection of God to work a contradiction, and therefore is impossible even for Omnipotence itself) that God *must* make man capable of obeying or disobeying. If he could only obey, he could not be a free agent at all. The existence, therefore (the possible existence, I mean), of moral evil, arises, *of necessity*, out of man's being created a free agent. And the question then assumes this form:—Was it inconsistent with the benevolence of Almighty God to create man a free agent? This is, indeed, the real question; and I cannot but think that it suggests to every considerate mind its own answer—that it is not. God does not will that evil shall exist, but permits to man the choice of obeying or disobeying, that His glory may be more promoted by man's willing obedience; puts his command upon him—a very light and easy one—a simple abstinence; adds a statement of the consequence, 'In the day that thou eatest thou shalt die,'—the command easy, the alternative awful—and then leaves to

man to act freely. State this to any simple person ; would he doubt, if asked whether he considered it benevolent and kind in Almighty God to give him such an option, what to answer ? Yet the disobedience of Adam was the beginning and origin of Moral Evil. Does not this consideration, then, go far towards solving the difficulty ? God made man perfect (yet free to choose), and man has (by that freedom) ‘sought out many inventions.’ But surely it was benevolent to give him the choice.

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Some Thoughts on Geology and Revelation.

Creation being by the fiat of an Omnipotent Being (for I suppose that to be a conceded point), is only one fact. At the time of the creation of this our world, the law of matter and motion being part of such creation, *reasoning* from cause to effect begins. There can be no mere reasoning to establish how and in what former manner the world was created ; that is, and ever must be, a mere question of fact, depending on the evidence, direct and probable, applicable to it. Now the direct evidence, which is of a far higher degree than merely probable evidence, can only be that of Revelation. No one but the Almighty Creator was present thereat. For instance, why should we argue, as if we could arrive at any certain (I speak not of any probable) result by reasoning, whether the strata of the earth were created horizontal, and then disturbed ? It is certainly as possible, and, if there be evidence of it, as reasonable, to suppose that they were created in what we call a disturbed state, and which, if it has occurred since creation, is, no doubt, really a disturbed state ; for after that time the laws of matter and motion, by the hypothesis, began. To illustrate this further. If we see a man now, we conclude from observation and physical reasoning that he was first a babe, and then a boy ; and we conclude rightly. But we should talk sad nonsense if we were to argue from this that Adam was created a baby, and then grew to manhood afterwards ; for our reasoning is upon the tacit supposition that we exclude the case of the first man. We ought also, if we wish to reason rightly, to exclude, by the same tacit supposition, the case of the newly-

created world. Those who do not make this tacit exception, do in reality, though they do not say so, uphold the eternity and eternal change of matter, and deny a Creation and a Creator.

It comes, then, to the question—Have we a Revelation on this subject? If we have, the direct evidence is conclusive.

But this ought not in the least to prevent us from adverting to the various phenomena of the world, and using them as evidence of the fact, in due subordination to the direct testimony of this Revelation when established. As interpreters of Revelation, such phenomena are, no doubt, very valuable. In all probability, however, after doing this, we shall find that the rational conclusion on this subject will be that the Revelation, though it incidentally and in general terms describes creation, yet does so only with the end of showing us thereby our moral relations with the Creator. It was never intended to teach us mere philosophy. It speaks to men, and generally according to the received knowledge of the time when it was promulgated. If it had not done so, it would have been wholly unintelligible to them. The Bible says that God hath made the round world so fast that it cannot be moved. Was the Newtonian theory, that the earth moves round the sun, contrary to this? Certainly not. The philosophy of Newton only shows that the real meaning of the passage is not according to the literal words, but that its true sense is, that the earth, *relatively to the power of man*, is stable, and cannot be moved by him. So the substance of the first chapter of Genesis is really no more than this—that all things, matter included, and mind also, were created by Jehovah: perhaps, indeed, created in the order stated, and indeed probably so, but not necessarily. Thus matter was first, covered with waters; then light, and so on. The periods called days imply this succession, but not necessarily more. The days are spoken of before that which measures what we call a day now—a revolution of the earth, and the exposure of its successive parts to the light of the sun—was created. It would be foolish, therefore, to dogmatize on this point. No doubt, it was just as easy for a creation to take place by the fiat of Omnipotence in successive days, or hours, or moments, or in successive intervals of any other length, or without any intervals at all. But how

long the intervals or successive periods of light and darkness may have been before the sun was created, who can tell, or how does it concern us to know it? Does it affect the fact of Jehovah's sole self-existence, and of His creation of all things out of nothing, which is the real point of this great Revelation? The great discovery remains unaffected by the mode of creation: it depends upon the fact of a creation. Our dependence on Him is the same; our relation to Him remains unchanged, whether the intervals of days are days of twenty-four hours, or as elsewhere said in the Bible, days of a thousand years. Each would bear in true philosophy *exactly the same* proportion to infinity.

Let us leave the geologists, therefore, to examine and discuss. They are not wise to dogmatize about times and anterior creations. But it is an innocent, if it be not a very wise speculation, and need not give the slightest uneasiness to a believer in the Revelation of the Bible.

The following are in the nature of the preceding detached thoughts, and, as such, may be inserted here. They embodied themselves in verse almost as often as in prose:—

Paraphrase on 1 Cor. xiii. v. 13.

And now these three—Faith, Hope, and Love—remain,
But Love, the third, far greater than the twain:
For Hope, when once possession comes, must fade;
'Tis Hope no longer than while joy's delayed.
And Faith, that humbly trusts, with eye so bright,
Is truth no more, when once absorbed in sight.
Yet Love, unchanged in heaven itself, must prove
Sublimed, ineffable—yet still but Love.
Yes, when the world, in God's dread awful day,
In storms of fire shall melt and pass away—
When heaven's bright arch shrinks like a shrivelled scroll,
And doubts and fears distract each troubled soul,
'Midst that stern tempest Love shall upward soar,
And as it burns, shall only brighten more.

On Visiting the Churchyard at Monmouth, on Palm Sunday,
1836.

Rest, humble tenants of this holy ground ;
 I love to visit you when early spring
 Scatters with hand profuse its gifts around,
 Whilst duteous bands their annual offering bring
 Of freshest flowers, to crown each narrow bed ;
 And whilst they weep o'er many a kindred bier,
 They seem to say, ' They are not wholly dead—
 They still dwell with us, while they slumber here.'
 O ! may no false philosophy deride
 The gentle superstition, nor with rude
 And heartless jeer into these haunts intrude ;
 But still may love, at meek religion's side,
 Triumphant over death, thus point the way
 To realms where friends shall meet in endless day.

Thoughts in a Churchyard.

' Here lies !' O, what a world of thought is there,
 Included in two words ! Beneath that stone,
 Some busy head, with never-ending schemes
 Of wealth and power, or pleasure's giddy whirl,
 Perchance awaits its doom. Alas, poor worm !
 What can these wretched trifles now avail,
 That perished in the using ? Can it be
 For dross like this that thou hast cast away
 The priceless pearl—thine own immortal soul ?
 O, couldst thou but return to tell the gay
 And thoughtless multitude what now thou know'st !
 Alas ! 'twere vain. In characters of light
 'Tis written in His Word, and yet they read not.
 Now pass we onward. Underneath the turf,
 In death's calm peaceful sleep reposing, lies
 A heart which erst with holy sympathy
 Instinct, and purest love to God and man,
 Beat yet with trembling joy, as knowing well
 The bitter root of deep indwelling sin,

Then most apparent to his clearer eye,
When, raised in contemplation's earliest gaze,
He viewed the awful purity of God.
Blest spirit! resting from thy labours here,
Dead unto sin alone, in living hope
Thou wait'st thy coming Lord,—soon, soon to hear
His blessed summons—'Enter into joy.'

What little stone comes next? that marks the spot,
Where, early called, ere yet life's evil thoughts
Had stained thy soul with sin, thou, gentle babe,
Liest, sweetly slumbering now. Alas, what tears,
What sad regrets, did this, thy greatest gain,
Cause to some loving hearts, that beat for thee
With all a parent's fondness! Now, behold
They slumber at thy side, blest if at last,
The burthen of the flesh cast off, their souls,
Washed in redeeming Blood, are pure as thine.

The question of Reformatories, about which it will be remembered that at an earlier period he had spoken doubtfully, if not with actual distrust, was prominently brought before the public mind by the Act of Parliament passed for the encouragement of such institutions in the year 1854. Whether, during the interval, circumstances had led him to modify his opinion, not as to the advisability of superadding banishment to detention for purposes of reformation, but as to making it a *sine quâ non* to the system altogether; or whether increased familiarity with the subject, and the spectacle of its success on the Continent, had induced him to consider as practicable what in 1838, according to his reluctant admission, had struck him as the reverse, it is clear, from the tenour of his charge to the Grand Jury at York in the winter of 1854, that the difficulties in the case no longer remained in his judgment insurmountable. On the contrary, he seized the occasion, to be almost the first to advocate, in strong and feeling

terms, the utility of these institutions ; and perhaps it is not too much to say that a valuable impetus was imparted to the public feeling in their favour by his language upon that occasion.

Almost the last subject of public interest which engaged his thoughts was the proposed re-arrangement of the Circuits, and other legal business. During the autumn of 1856 he was invited by Sir George Grey to become a member of the Royal Commission appointed for that purpose ; and although he only lived to be present at the first preliminary meeting, he had repeatedly given the subject his attention, and committed to paper certain suggestions which, had he lived, would probably have been imparted to his colleagues. At the same time, it should be remembered that they are the impressions with which, upon this occasion, he approached the inquiry, and possibly not the precise result at which he would have arrived after mature deliberation with other members of the Board. From a few brief memoranda found among his papers after his death, it would appear that he still adhered to an opinion expressed by him, when the subject was last under consideration, in favour of a more equal division of the legal year by the two ordinary Circuits. The Spring Circuit, he thought, might begin as early as the second week in January, and extend to the end of the ensuing month ; the Summer Circuit might begin about the 20th of July, and last to the beginning of September. By this means he conceived that the necessity of a third Circuit might be, in all but extraordinary cases, avoided, without very materially sacrificing the Long Vacation. Then as to the re-arrangement of the Circuits themselves, he says—‘ If any alteration be made, the number of Circuit towns must be, I think, in the first instance diminished. The following seem to me to be capable of

being discontinued, or united with others, without inconvenience :—Appleby, Huntingdon, Rutland, Monmouth, and at least six counties of Wales.’

Another point which he would seem to have considered was the possibility of reducing the number of Term times from four to three. In that case, the first Term of the year might begin on or about March 1st, and last till the 28th of that month ; the second might begin on the 1st, and last through the month of May ; and the third might begin as at present, on the 2nd, and last until the 28th of November. Or if the four Terms were preserved, the whole curriculum of the year might stand somewhat as follows :—

Michaelmas Term as at present, and Sittings after do.

Spring Circuit, January 7th to March 10th.

Hilary Term, March 10th to April 6th.

Sittings, April 6th to May 4th.

Easter Term, May 4th to May 18th.

Sittings, May 18th to June 1st.

Trinity Term, June 1st to June 22nd.

Sittings, June 22nd to July 20th.

Summer Circuit, July 20th to August 31st.

These were some of the points, the feasibility of which he was considering, when this sphere of public usefulness was summarily closed by his last illness and death.

The two last summers of his life were spent in Normandy. At the close of the former of them, passed at Trouville, at the mouth of the Seine—a residence which afforded him an opportunity of indulging his roving propensity by a tour through the western districts of the province—he returned to London, to preside at the October Sessions of the Old Bailey, memorable for the trial of Sir John Dean Paul and his partners.

The Long Vacation of 1856 was passed at Dieppe. Seldom had he appeared to enjoy his holidays more thoroughly, and little could any one, a witness of the spirits and vigour by which he was animated, have anticipated that they were destined to be his last. As little, perhaps, would any one seeing him a few months later, upon the bench at Liverpool, presiding with what struck more than one observer, unusual force and ability, have conjectured that the hours of that vigorous intellect were numbered, and that even then he was taking an unconscious farewell of a scene familiar to him, as he observed, in his last charge to the Grand Jury, ‘For now nearly fifty years.’

An unfortunate shock—the sudden news by telegraph of the alarming illness of his third son, followed by a long night journey, passed in great anxiety of mind—may have served, more or less, to precipitate the approach of the fatal disease. It might almost seem as though for a moment the curtain of the future was raised, when he expressed, with an earnestness and solemnity of manner which the companion of his journey will not easily forget, his conviction that his judicial labours had for ever closed. ‘I shall never go another Circuit,’ he exclaimed, with slow emphasis, before leaving Liverpool.

On his arrival at Brighton, where he found his son still in serious danger, he did not appear to have suffered in health from the unwonted exertion of the previous night; and the gradual improvement in the condition of the invalid, removed from his mind, in the course of a few days, all anxiety for his safety.

There was yet an interval, after his return to London from the Liverpool Winter Assizes, before any indication of the impending blow. Once more was he permitted to gather round his table, as he loved to do at the season of Christmas, his children and others of his family and friends;

and although in the course of the day he complained of headache, and appeared oppressed with unusual sleepiness, neither circumstance was of sufficient gravity to challenge much observation at the time, or to awaken the slightest anxiety. It is probably only on looking back that they may be connected with the sequel, as the first approaches of the malady by which he was to be so shortly prostrated. A few days more, and the blow fell. He had accepted an invitation to spend a few days at Beechwood Park, in Hertfordshire, the seat of Sir Thomas Sebright, and had left London on the 3rd of January to fulfil his engagement. On the second evening of his visit he was attacked with sudden giddiuss and unconsciousness, which, however alarming at the time, appeared, after an interval of considerable length, to yield to the remedies applied, and he was removed in what seemed a convalescent state to town. There, after a delusive rally, the affection of the brain, whatever its precise nature, proceeded with gradual, but rapidly gradual, strides—first taking the form of a strange quietude, and lack of interest in the scene passing around, and resulting finally in deep sleep, and total unconsciousness. Between these two stages of the disorder there were times when the stupor was apparently lightened, and he even spoke; but its progress could never be seriously arrested. Once, at a comparatively early period of his illness, upon the conclusion of a chapter of the Bible which had been read aloud to him, after a long meditative silence, he broke forth, with something of his old earnestness of manner, with an exclamation on the absence of all sectarian spirit in the portions of the Bible inserted by the Reformers in the Prayer-book; and once again, a few days later, he opened his eyes to recognise, and address with the fondest affection, each individual around his bed—to express, with something almost of rapture, but with perfect calm-

ness, his joy in having those whom he most loved around him, and to join with them in receiving the Holy Communion. One expression, and one only, throughout the whole course of his illness, bore any reference to his own state, when, in answer to the inquiry how he felt, addressed to him on the latter of the two occasions which have been mentioned, he exclaimed briefly, but characteristically — ‘The worse, the better for me.’ This was the last of these few transient intervals of revival; the rest was all unbroken slumber, out of which he had been only temporarily aroused, and into which he almost suddenly relapsed. For ten days more he lay with no material change in his condition, at the end of which time it became clear that he was rapidly sinking; and on the afternoon of January 27th, 1857, in the same perfect repose, with two gentle sighs, he breathed his last.

He lies in the churchyard of Risby, his brother’s living, near Bury, in Suffolk; under the shadow of a portion of the Church which was his own gift—in a spot unconsciously designated, a few short months before, as one in which he would like some day to lie—among many of the humble poor, a class who largely shared his sympathies in life, and near whose grassy mounds, in congenial neighbourhood, he rests from his labours.

* * * * *

Twenty-six years of routine work—half a century almost spent in a sphere of which all the action is comprised in the regular alternation of Circuit, Term time, and Vacation—obviously do not possess the same materials for narrative as a career of enterprise or politics. It is enough if, in the necessary absence of more exciting matter, these pages may have indicated, however faintly, the inner side of a nature which not only voluntarily receded into the

sphere of home, to be there best known and appreciated, but over which, moreover, its own complexity in certain particulars may have thrown a certain amount of disguise. The union in the same person of conflicting tendencies—feelings which are more or less veiled from the recognition of the world—remain through life an enigma to many. It was impossible for those who knew him best not to be conscious that much of his deeper nature, and many of his most endearing qualities, were thus liable to be hidden from superficial observers.

There were certain points in respect of which it might, perhaps, be justly said that the character of which this narrative treats exhibited a succession of remarkable contrasts. There was a disinclination to change, and a clinging to the associations of the past, which might induce the notion that he was by inclination ultra-conservative, and ill affected towards rational improvement at the price of change ; and yet instances might be cited, on questions of social, political, and religious interest, in which the capacity of his mind to adapt itself to the requirements of the day was unmistakeably evinced. He could retain to the close of life the same engaging simplicity of nature, without impairing, on the other hand, his usefulness as a practical man of the world. Where he deemed it a duty, he could bring his mind to the posture of the most childlike faith, without ceasing to be, in other matter, an acute and close reasoner. It might appear surprising, too, that to a temper of mind essentially serious he should have united the keen sense of the ludicrous, and uncontrollable love of fun, by which he will possibly be remembered, when other and higher claims to recollection are forgotten ; or that, while apparently yielding somewhat to a constitutional indolence of disposition, he should yet have cultivated the habit of incessant

intellectual employment,—often most engaged in thought, when to all appearance least occupied. But apart from these points of antagonism, there were others also in which his character was liable to be misinterpreted. The warmth of heart and depth of feeling, which were veiled under a manner too inartificial to be always understood, were fully known to those only to whom circumstances were permitted from time to time to reveal them. Many with whom he mingled in society, and who have seen and judged of him from without, were backward to guess the strong sympathy which bound him to his fellow-men; and more than once has an erroneous impression been removed by the chance discovery of some act of kindness or timely countenance—some little evidence of feeling, or word of encouragement, when encouragement was precious—something, in a word, which disclosed what lay beneath the surface, and opened to view a heart which emphatically could sympathize with the joys and sorrows of others. And if the kindliness of his feelings was liable to pass unrecognised, his expression of his views and opinions from its very earnestness and freedom, was open to misconception of another kind. In talking on a matter which interested him, he was not careful so much to pick and choose his words as to give free vent to the current of his thoughts—*liberare animam*. Even to a discussion of comparative indifference, his kindling manner and emphatic tones often imparted an appearance of warmth which the subject might hardly seem, to one who knew him less intimately, to warrant.

It will not be out of place to draw attention, before concluding, to a few of the most distinctive points in his purely mental powers. It was said by one of his earliest and most eminent companions, both on the Northern Circuit and the Bench, that he was an extraordinary instance

of an acute and vigorous understanding, united to great powers of reasoning, and great wit. Perhaps the most marked feature, however, of his intellect was not so much either its power to grapple with difficulties, or the logical ability which it possessed, and of which many of his legal judgments afford proof, as the singularly rapid and intuitive manner in which his powers of reasoning, and indeed of comprehension generally, were exercised. A hint or two, picked up here and there, often sufficed to enable him to spring upon the meaning of the whole; he had often, to a great extent, mastered the details of a subject, where ordinary minds would have probably only apprehended its outline. To this intuitive sagacity he owed not only in great part his professional success, but also the enviable ease with which he accomplished mental work of all kinds, however uninviting.

Of the 'observing faculty'—on the value of which he dwells, in forcible language, in a letter to one of his sons—he furnished in his own person a notable instance. Wherever he went—in whatever society he found himself, he carried with him the habit of acquiring information. Whenever anything was to be learnt, he had, as it were, a feeler out—a pore open; and nothing which conveyed a new idea came to him amiss,—from such comparative trifles as the secrets of a training-stable or the art of the wrestler, to the phenomena of natural history and the structure of the human frame. His official work was in this respect turned to great account; for the variety of material from which information might be gleaned, thus brought under his notice, served to familiarize his mind with an infinite number of subjects, and to give him more or less insight into almost all. No one, for instance, who happened to be present in a court of justice over which he presided, when points of medical science were

mooted, could fail to be struck by the familiarity he manifested with the subject, and the technical knowledge of anatomy which he possessed. And yet, he had probably never spent an hour in his life in its direct study ; but by putting together the results of medical testimony tendered in his presence, of conversations with physicians, and of his own desultory reading on the subject, he gradually amassed a body of information by no means inconsiderable. How the stores of knowledge drawn from persons or books were not only retained, but also subjected to such a mental arrangement as admitted of their being invariably produceable on demand, was even more remarkable. Doubtless, much was due to a naturally retentive memory ; but that memory stood greatly indebted to the habits established by himself for its regulation in his early life.

One of those rules was, it may be remembered, the exclusive concentration of the mind on the subject immediately before it. As a mental habit, the effects of this were invaluable. It is, however, in an aspect of secondary importance—as an external trait, often giving him an absent and preoccupied air,—that it serves vividly to recall his memory. So completely would he become engrossed with the one idea of the moment, that he had neither eyes nor attention for anything else ; and it required not a little skilful manœuvring to re-awaken his interest in what was passing around. This state of intellectual absorption was never more exhibited than when reading. While so occupied, nothing short of actual interruption could distract or disturb him ; and while he seemed merely to skim the contents of each successive page, it would afterwards transpire that nothing material had escaped perusal, and that he had, as it were, extracted the kernel of the whole. ‘ I do like to see the Baron *disembowelling* a book,’ was

the phrase of an intimate friend, which aptly described his manner of possessing himself of the contents of his volume.

A few words may be devoted, while on this head, to that which, if not a mental feature, was at least a mental acquirement, — the cultivated and elegant scholarship which placed him at the head of his year at the university, and the attachment to which terminated only with his life. If the attention devoted to mathematics developed in him the able reasoner of after-years, in the classics he found something the effects of which were no less abiding, — a perennial source of enjoyment and recreation. In this taste lay so great a part of the amusement of his leisure ; so characteristic of the man was the habit which it engendered of constantly expressing his thoughts or feelings in verse, that it has been felt that this circumstance would warrant a somewhat free insertion, in the course of this narrative, of verses which, apart from the question of merit, may be said to constitute a great part of the lighter history, as it were, of his life.

A pleasing indication of the regard in which he held the ancient studies is furnished by the tone of correspondence maintained year after year with his old preceptor, Bishop Maltby, in which, from the graver or more exciting topics of the day, they often glide back to the old subjects of the past, and the old relation revives once more,—the pupil inviting, and the tutor according, his criticism to some classical effort transmitted by the former.

A nice observation of persons or things, united to a genial temper, and a mind the grave mood of which closely underlies the gay, go far towards constituting a humorist. But though possessed of these, he had, nevertheless, rather a capacity for humour—an appreciation of the humorous—than that quality itself. Of wit, however, he

enjoyed a copious fund : it was the genuine product of his nature, and acquired an additional charm from the careless prodigality with which its shafts were scattered around. It is a delicate matter to criticise the quality or order of this or that man's wit ; but were the attempt in this instance made, it might perhaps be said that, though often dealing with ideas, it most frequently assumed a verbal character, revelling in the quaint or ludicrous collocations of language, and playing with peculiar brilliancy and felicitousness over the surface of words. In this 'verbal wit,' he might be pronounced to excel. By nothing will he be more vividly recalled by those with whom he was brought in contact, than by the many happy sayings and witty sallies to which he was in the habit of giving vent. Not a few of these linger in the reminiscences of the Northern Circuit, where his talents as caterer for the amusements of the bar were frequently invoked in his capacity of poet-laureate to the Circuit, or appointed satirist of men and manners. But matter of this kind it does not come within the scope of these pages to reproduce in detail, as, however relished by the initiated, it does not possess sufficient general interest to warrant insertion. His function is well described by himself at the commencement of one of these mirth-moving effusions :—'It must be well known how I have on all occasions endeavoured to catch the manners living as they rise, and to record in tuneful numbers the prominent adventures and fundamental features in the Northern Circuit.'

It is enough to gather from the testimony of his contemporaries how much he contributed to the life and vivacity of their common Circuit days. Speaking of this period, one of the most distinguished of them* writes as

* Lord Wensleydale.

follows :—‘ His reputation among us was the result of a great number of small instances of mental power and playful wit.’ And another,* whose constant friendship dated from the time ‘ when they two joined company as barristers, and drove round the Circuit together in one carriage,’ says :—‘ In society, on the Circuit, he was full of wit and fun ; and very many of the witty and amusing things and writings, in prose and verse, which entertained us all at the Grand Court of the Northern Circuit, were the product of his brains : and yet he never brought forward anything which was ill-natured, or calculated to wound the feelings of those who were made the subjects of joke.’

There is an obvious difficulty in giving more than a general idea of a faculty which exercised itself unreservedly upon the incidents and persons that passed, as it were, under its review ; but a few examples may not be deemed unacceptable of the happy rapidity with which, on the spur of the moment, he threw off an epigram or impromptu. In that which immediately follows, he contributed his quota to a subject prolific of similar efforts—Chantrey’s woodcocks—shot at Holkham, and immortalized by the art of the illustrious sculptor. It was at the time of the Reform Bill that he happened, with the Bishop of Durham, to be talking of inscriptions for the marble ; and upon the Bishop’s producing a Greek one, he took his pen and wrote the following, availing himself, in a spirit contrary to that of its originators, of the cry introduced on the hustings, by Mr. V. Harcourt, M.P. for Oxfordshire, and repeated all over the kingdom at the General Election of 1831 :—

Behold the fruits of Chantrey’s gun—
Two woodcocks, and the shot but one ;

* Sir J. Patteson.

But happier far for Church and State,
 Had it but been the artist's fate
 To miss the body, and to kill
 ' *The Bill, and nothing but the Bill.*'

In 1835, Mr. Baron Vaughan, who had agreed to go from the Court of Exchequer with Baron Williams—one to the Common Pleas, and the other to the Queen's Bench, to be replaced in the first-mentioned court by Barons Parke and Alderson—refused to go without a seat in the Privy Council; and not coming to the Chancellor's room, where the matter was to have been finally concluded, the judges concerned returned to their respective courts. It was afterwards arranged by Lord Brougham. Shortly before, it was said that Sir William Horne had lost the post of Attorney-General, by a rash acceptance of a seat in the Exchequer, which he afterwards tried to refuse, and so missed both places. These two occurrences gave rise to the following colloquy in verse:—

Says heedless Horne
 To wary Vaughan,
 Why doubt you thus Lord Brougham?
 Come, take the oath,
 And, nothing loth,
 Go to his private room.

To heedless Horne
 The wary Vaughan
 Thus tauntingly replied:—
 Indeed, Sir Will,
 'Twere no great skill
 To take you for my guide.

In vain Brougham tries
 To blind my eyes;
 In vain he tries to coax;
 I know as well
 As he can tell,
 H O A X spells hoax.

At you, dear Horne,
 Each night and morn,
 The cunning lawyers scoff;
 But as for me,
Right Hon. I'll be,
 Or else I'll be *right off*.

A well-known barrister on the Northern Circuit, who afterwards attained the Bench, was unsuccessful in his application for a *silk* gown, after having been recently returned as a member to Parliament. In a squib, intended as a parody of some Greek lines, he is represented by the poet-laureate as defying the obdurate Chancellor—and as mainly falling back, for his own consolation, on the reflection, that, ‘after all, *stuff*’ would go down with the House.’

Upon one occasion it happened that a learned counsel, in the course of an argument before him, was led to quote some observations on the Courts of Common Law, made by an eminent ex-Chancellor in the House of Lords. His dissent from the view adduced was intimated in the following laconic note, which he wrote, and passed to the learned gentleman:—‘I am clearly of opinion, from the observations quoted to us, that X-Chancellors are not always Y’s (wise) Chancellors.’

The origin of the following is sufficiently explained by the note prefixed to it:—‘Ode to the Lay Lord attending *de die in diem* the House of Lords, sitting in error, from a Pitying Spectator. Written during the argument of the *Bishop of Derry v. the Irish Society*, June 22, 1846—a very hot day:’—

In other days, the men of old,
 Out of their flock, a goat selected,—
 Placed on his head their sins untold,
 Then to the wilderness ejected,

That he instead of them might bear
 Their countless errors, wretched wight,
 Into the howling waste—and there
 Get rid of them as best he might;
 So thee the House select as fit,
 In spite of thy reluctant terrors
 T' attend to-day in turn, and sit,
 Responsible for all their errors.
 And what's the howling waste afar,
 Or what its beasts, compared with those
 Who now, arranged behind that Bar,
 A host of manes and tails disclose?
 Poor scapegoat of the House's form,
 Condemned to listen, right or wrong,
 In weather that's so very warm
 To men who speak so very long:
 Condemned to hear, with aching head,
 And mind, alas! on fullest stretch,
 Sir Thomas, too profuse of Z
 And — — not profuse of H.
 Thou startest when they talk of Coke,
 Of Butler, or the last collation;
 Alas, alas! that eager look
 Denotes esurient expectation.
 Now popped sleep above thy head
 Floats nodding on her silken wings;
 Thou dreamest—yet, alas! in dread—
 For e'en thy dreams are fearful things:
 Protection gone—corn sadly low—
 Maynooth—Coercion—Tariffs—flit
 Before thy sleeping eyes—and lo!
 Sir Robert comes instead of Pitt—
 An airy lord of Ways and Means,
 A fearful engine of Progression,
 He seems t' abolish Bishops, Deans,
 And Canons, too, in sad succession.
 Now followed by a rabble rout,
 The labourer's friends he rudely scatters,

While artisans in triumph shout,
And pensive farmers weep in tatters.
Eftsoons near some cross dreary road,
• Mixed with a crowd of faces silly,
Thou seem'st to wait the coming load
Of Richmond Coach or Derby Dilly;
Meanwhile Lord John and Peel frisk by
At railway speed—a sad connexion—
“Take care of your own toes,” they cry—
“That's for your corn the sole Protection.”
That dread imaginary pain
Has roused thee—lo, thou rubb'st thine eyes—
And upright on the Bench again,
Endeavourest vainly to look wise.
Thus from perturbed slumbers waking,
'Tis better far, before we go,
To sit and yawn, than thus be breaking
Thy landlord's heart with fancied woe.
And hark! the pealing clock strikes four—
The hour of freedom's come at last—
'Tis done—the periodic bore—
The writ of error—now is past.
Home to thy loving, longing spouse,
With mingled grief and triumph say,
I've done my duty to the House,
But ah! like Titus, lost a day!

* * * * *

One word only, and this sketch may be brought to a close. Although approaching the term usually allotted to the life of man—the appointed threescore years and ten—the closing in of his earthly career, as it was undoubtedly sudden, was also in a certain sense premature. And yet, it will scarcely appear so, on reflection, to any who knew him really well. An exquisitely sensitive organization—a brain literally hardly ever at rest—do not carry with them, however great the physical

strength, the promise of longevity. That for so many years he was permitted to do his appointed work, was, to one imbued with his deep sense of duty, a source of continual thankfulness to God. In the thought of what he was during those years, lies a fund of enduring comfort for those who mourn his loss,

THE CHARGE TO THE GRAND JURY OF THE COUNTY OF DORSET,

AT

*The Opening of the Special Commission at
Dorchester,*

ON TUESDAY, 11th JANUARY, 1831.

GENTLEMEN OF THE GRAND INQUEST,

I greatly regret that this, my first occasion of addressing a body of grand jurors, should have occurred under such painful circumstances to us all; and that, instead of being able at an ordinary assizes to congratulate you on the state of your county and the decrease of crime, it should be my duty to advert to topics of a far different and more unpleasing description. We are assembled for the purpose of investigating, at this unusual period of the year, the numerous offences which have of late prevailed in this county. Nothing can be more desirable at all times than that the innocent, if falsely accused, should be speedily delivered from the charge; and that, without delay, a severe but useful example should be made of the guilty. If this be true at all times, it is more peculiarly so at a time like the present, when we have seen, in various parts of the kingdom, many of the lower orders of the community assembling themselves in large bodies for the redress of their real or supposed grievances; tumultuously proceeding from parish to parish, and almost from house to house, committing acts of outrage and violence; demanding, with threats, from the peaceable inhabitants of their districts, forced contributions; and destroying property of the greatest value to its proprietors, and of the utmost importance to the community. In other districts large quantities of agricultural produce have been consumed by fire, men's dwellings have become insecure, and general alarm and anxiety have extensively prevailed throughout the kingdom. Under such circumstances as these, his Majesty, relying on the loyalty, firmness, and good sense of

his people, has called upon us, under this Special Commission, to investigate the cases of these offenders, and to bring them, if necessary, to due punishment—a measure doubtless of wise and prudent precaution. If the law were not promptly administered, and such outrages, by firm and vigorous measures, repressed, I know not to what extent they might not go, nor whether we should long be able to retain those blessings which the happy constitution of this country, steering a middle course between arbitrary power and wild misrule, has hitherto preserved for us.

It has given me, and those with whom I have the good fortune to be associated, much satisfaction to find that the call has been promptly answered and obeyed. In the two counties to which our labours have been extended, we have met with the most active and intelligent co-operation from all classes of society; and we doubt not—indeed this assemblage of the gentry of this county to-day, and, I may add, of the yeomanry yesterday, proves that we ought not to doubt it—that the same alacrity and intelligence will be found here, where our painful duties will terminate.

It is very difficult to determine from what causes these disorders have originated, which have of late disturbed and disgraced this kingdom. I apprehend that those are much in error who assign any one cause as sufficient to account for what we have witnessed. Distress is said to have produced it; yet it would be difficult to show that the distress of this year has exceeded that of the last, that the wages of the labourer have lately diminished, or that the price of the principal articles of his subsistence and clothing has of late increased. But yet I do not doubt that distress is one of the causes of the evil; distress sufficiently heavy, but yet, I fear, greatly exaggerated by interested and wicked men for their own bad purposes. Even in this kingdom, in which alone of all others there is a legal provision for the poor, poverty prevails—perhaps increased by the maladministration of those laws which are intended to relieve it. The encouragement which has been given to early and improvident marriages, and the consequent forced increase of the population, coupled with the payment of part of his wages in many parishes from the poor's rate, have lowered the labourer in the scale of society; and at the same time, the general spread of education which has extended even to him, and which has enabled a much greater number to read and write than in former times, has placed him in a

situation to feel more acutely his relative inferiority, without at the same time proceeding far enough to enable him to understand fully the real causes out of which his change of condition has originated. It is on a population thus distressed and half instructed that evil men have been too successfully practising their dangerous arts. They have endeavoured to persuade the poor that they are to be made rich by a change of law produced by force rather than by labour ; and have asserted that a general determination prevails amongst the higher classes to oppress them as tyrants, rather than to assist them as friends. They have endeavoured to dissever the bonds which hold society together, and to array in hostility against each other those whose mutual interests would require the most cordial co-operation and union. One of the means which they have employed for this purpose has been the dissemination of works of a dangerous description amongst the people ; and another has been to procure large bodies of the lower classes to assemble together, for the alleged purpose of discussing their grievances and the best means of relieving them.

On these occasions those grievances have been exaggerated, their cause misrepresented, and the people, who feel the pressure of distress, but who are not able correctly to estimate its causes, have been thus led to suppose that their distresses have their origin in the mode in which the farmer conducts his business, and have thereupon proceeded to destroy the property of the existence of which they complain.

The law has, however, provided remedies which, if properly and prudently enforced, would prevent some of these evil consequences. As magistrates and gentlemen of estate in your districts, it will be your duty to discourage and discountenance all such dangerous publications as may come under your notice, and, in some cases perhaps, to cause them to be subjected to investigation by the constitutional tribunal of a jury of the country. But upon this subject you will, of course, exercise a prudent and liberal discretion, confining the employment of such a power carefully to those publications which exceed the limits of all decency and good order, but not restraining the freest discussion on all subjects, if conducted within those limits. By these means the evil may be in some degree palliated. A far better and more effectual cure will, however, be found in the diffusion, amongst the poorer classes of the community, of publications of a more useful description, which will at once enlarge the sphere of their information and improve their moral con-

dition, diffusing amongst them the benefits of knowledge with the blessings of religion.

With respect to the next head, that of dangerous and unlawful assemblies, the law provides a full and sufficient remedy both for their prevention and punishment. By the common law, all unlawful assemblies of great numbers of people, with such circumstances of terror as are calculated to excite alarm and to endanger the public peace, are prohibited, and wisely prohibited, even though they proceed to no act of destruction, or injury of persons or property. For unless this were the case, such assemblies, acquiring additional strength the longer they continue together, would soon prove dangerous to the State. Their numbers would increase; their passions would become inflamed; they would grow bolder as they proceeded; and the example of the more violent would hurry on the rest from slight violations of the law until they arrived at offences of the greatest magnitude. The law therefore provides, that none can join such assemblies without incurring the risk of some punishment for that simple act.

It is against the violence of such riotous assemblies that the statute 1st Geo. I. c. 3, s. 5, was directed; which makes it a capital offence for twelve persons, or more, being unlawfully, riotously, and tumultuously assembled together, to remain or continue so assembled for the space of one hour after proclamation made in the King's name to disperse and depart peaceably to their habitations; and which contains provisions authorizing the seizure of such persons, and constituting it a capital offence wilfully and knowingly to obstruct, or in any manner to oppose, hinder, or hurt any person beginning or going to make such proclamation, whereby such proclamation is prevented from being made. And all those who have a knowledge of such hindrance, and continue together for one hour, to the number of twelve or more, are by the same act made criminal to the same extent as if the proclamation had been made. This surely is a measure calculated to suppress mischief in its origin, and prevent those dreadful crimes which are the ordinary results of a riotous and tumultuous mob. Many persons have fallen into the error of supposing that because the law allows one hour for the dispersion of the persons to whom the proclamation has been read by the magistrate, the civil power and the magistracy are during that period disarmed, and the King's subjects are bound to remain quiet and passive, whatever may be the conduct of the mob.

The language of the Act does not warrant any such construction, nor could such have been the intention of the Legislature. The civil authorities are left in the possession of all the powers with which the law had previously invested them ; all peace officers may and ought to do all that in them lies towards the suppression of such mischief, and may command others to assist them : and by the common law also, any private person may lawfully endeavour to appease such disturbances by staying the persons engaged from executing their purpose, and by stopping others who are coming to join them ; and all persons, even a private individual, may do any thing, using force even to the last extremity, to prevent the commission of a felony.

Whilst I am on this subject, I wish to draw your attention to an act which provides a great additional security to the public peace. The 7th Geo. IV. c. 37, empowers two justices, on the information on oath of five respectable householders, to add to any extent to the number of peace officers, by making special constables in cases of apprehended tumult, riot, or felony. This species of constitutional force has been rendered most effective in the two counties which we have just quitted ; and I am glad to observe that it has been equally so in this county, by admirable arrangements, which, if acted upon with regularity and perseverance, will be a most important means of preserving the public peace, and preventing criminal outrage of every kind. And it should be known, that whilst his duty to his country requires from every individual selected to fill this office by the magistrates a willing obedience to their order, the law secures his compliance by making him liable to indictment in case of refusal.

The 7th and 8th Geo. IV. c. 30, which protects, by the penalty of death, houses and other property from tumultuous mobs, affords another protection to the public peace. It provides, that if any persons, riotously and tumultuously assembled together to the disturbance of the public peace, shall unlawfully and with force demolish, pull down, or destroy, or begin to demolish, pull down, or destroy, any church or chapel, or any chapel for the religious worship of dissenters duly registered, or any house, stable, coach-house, outhouse, warehouse, office, shop, mill, malt-house, hop oast, barn, or granary, or any building or erection used in carrying on any trade or manufacture or any branch thereof, or any steam-engine, every such offender shall be guilty of felony, and on conviction shall suffer death. The same act contains clauses imposing less severe punishments

upon the destruction of machinery otherwise than by a riotous assembly of persons. By the third section, the cutting, breaking, or destroying, or damaging with intent to destroy or render useless, any loom, machine, or engine in the silk, woollen, linen, or cotton manufactures, is made a felony punishable with transportation for life or for any term not less than seven years, or imprisonment for any term not exceeding four years, to which whipping (in the case of a male), and, by another clause, hard labour or solitary confinement, may be added. The offence of destroying or injuring other machinery is provided for by the fourth section of the same statute, which makes it a felony punishable by transportation for seven years, or imprisonment for any period not exceeding two years, with the discretionary addition of whipping, hard labour, and solitary confinement, if any person shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or render useless, any threshing-machine, or any machine or engine, whether fixed or moveable, prepared for or employed in any manufacture except that of silk, woollen, linen, or cotton. By another clause in this statute, express malice against any particular individual is not required to constitute this offence; and I may also add, that threshing-machines, in the opinion of the judges on this commission, are equally within the protection of the law, whether at the time of the destruction or injury they are in the course of employment in their entire state, or have been taken into separate pieces from apprehension of danger or any other cause, with an intention of putting them again together for use.

By these enactments the Legislature has endeavoured to protect machinery of all descriptions from the attacks either of violent and ungovernable mobs, or of ignorant and misguided individuals. The wisdom of these laws seems unquestionable. The use of machinery is one of the great sources of our national wealth and prosperity; and, whilst it is highly beneficial to the community to which we belong, it is far from being injurious even to those individuals with whose employment it may at first sight seem to interfere. The cheapness of production which is caused by machines increases the demand for manufactured articles; that increased demand causes a further demand for labour; and thus machinery in the end increases labour. For evidence of the truth of this proposition we have only to refer to the great manufacturing districts of this kingdom, in which, during the present century, the improvements in machinery exceed belief; and yet the means of employment and

the number of labourers employed have in the same districts almost kept pace with those improvements. There is a beautiful and simple illustration of this principle, to which you will perhaps permit me to refer, not with a view to your information, but to that of others. Before the invention of the printing-press, a body of men used to gain their livelihood by the copying of manuscripts; these men were wholly thrown out of employ by that brilliant and useful invention. Suppose they had collected a mob and had proceeded to destroy all printing-presses. I pass by the evil which the world would have sustained had such an enterprise been successful; but I ask (which is the point to which I would call your attention), how much labour would have been thereby destroyed? The printers and pressmen, the paper-makers, and mechanics who owe their employment to the printing-press, and who are a thousandfold more numerous than the old copiers, would never have been called into existence.

The threshing-machine is said to increase the produce of the sheaves, and to diminish the expense of production of that most important necessary of life, bread-corn. But if its use be in any other material respect profitable to the farmer (and the increased number of such machines would seem to be a decisive proof of that position), it cannot in the end be otherwise than advantageous to the labourer. The arguments against its use would apply as well to the use of the scythe or to that of any other agricultural implement by which manual labour is shortened or rendered more efficient. If the labourer in agriculture thinks he ought to be allowed to put down these machines, let him consider for a moment how the same privilege could justly be refused to the artisan. But if it were claimed and acted upon by the artisan, the clothes and other necessities of life which the labourer now requires would become dearer; and then if all were to exercise these supposed rights, and all machinery were destroyed, the labouring classes of the country would be themselves the first to suffer the most dreadful distresses, and the whole community would gradually sink into the lowest state of civilization. But though these are undoubted truths, the less instructed part of the people is too often blind to them; and as this most valuable property is exposed to great risk from their ignorance and their passions, its safety is to be found in that protection which the law has provided, and which it must give to machinery as well as to every other species of property. If that law ceases to be administered with due

firmness, and men look to it in vain for the security of their rights and the enjoyment of their property, our wealth and power will soon be at an end, and our capital, skill, and industry will be transferred to some more peaceful country, where laws are more respected or better enforced.

The next offence to which I shall draw your attention is that of robbery from the person—a crime which has of late been very prevalent in these parts of the kingdom. The legal definition of robbery is the taking away from the person, or in the presence of another against his will, his personal property of any value, by violence or putting him in fear. Actual violence is not necessary, nor is it necessary that the robber should with his own hand take the property from the person robbed. It is enough if he obtains it by means of terror which he has excited for that purpose; and though the money be delivered by the prosecutor himself, it is in the eye of the law as much a taking by the thief as if he himself had taken it out of the pocket of the party robbed: nor does it make any difference if the money was asked as a gift or loan, or under any other colourable pretence; the offence is committed, if in truth the money was extorted by putting the other party in fear. This may be done by such menaces, by word or gesture, or such circumstances of terror as in ordinary experience create an apprehension of danger in a reasonable man, and induce him to part with his money in order to avoid it. The apprehension may be of danger to the person, the family, the habitation, the property of the prosecutor, or that with which he is entrusted by others; or it may be such fear of peril as a large body of men armed with offensive weapons, and apparently resolved on mischief, would excite, though no particular threat is used or injury designated by them at the time. If terror of this nature be created by any person, in order to induce another to part with his money, and he does so under the influence of that terror, this constitutes the offence; and all who are present aiding and assisting by act, word, or gesture, or are present merely, provided they are of the same party engaged in the same design with the person who commits the crime, and are intending that it should be committed, are as guilty as the man by whose hand the offence is perpetrated. This offence is, by the same statute of which I have made so frequent mention, punishable by death. An assault with intent to rob, a demand, with menaces or force, of property from another with intent to steal, is also made a felony punishable by transportation for life or for a term not less than

seven years, or by imprisonment not exceeding four. For the application of this law I am afraid you will have some occasion during the course of your present labours, as so many instances have occurred of large bodies of men traversing the country, and demanding or extorting money by threats or the appearance of force ; many, perhaps, not knowing the serious extent of their legal responsibility.

The last offence I think it necessary to mention is the crime of arson—one of the worst offences known to the law, of the deepest moral dye, easy of perpetration, difficult of detection, and most alarming and destructive in its effects. It is justly punished with loss of life. At common law the malicious and voluntary burning of the dwelling-house of another, or of a barn with corn in it, was a felony ; and certain ancient statutes made this offence and that of burning of ricks or stacks of corn, grain, and hay, in the night, or in particular counties, punishable with death ; and now, by a statute passed in the 7th and 8th years of his late Majesty's reign, which re-enacts a similar provision of the 9th Geo. I., the law on this subject is simply and clearly defined. The 9th section of this Act constitutes it a capital offence unlawfully and maliciously to set fire to any church or chapel, or to any place for the religious worship of dissenters duly registered, or to any house, stable, coach-house, out-house, warehouse, office, shop, mill, malt-house, hop-oast, barn, or granary, or to any building or erection used in carrying on any trade or manufacture or any branch thereof, whether the same or any of them respectively shall be in the possession of the offender or in the possession of any other person, with the intent thereby to injure or defraud any person. The 17th section renders it also a capital offence unlawfully and maliciously to set fire to any stack of corn, grain, pulse, straw, hay, or wood ; and the latter part of the same section subjects any person who shall unlawfully and maliciously set fire to any crops of corn, grain, or pulse, whether standing or cut down, or to any part of a wood, coppice, or plantation of trees, or to any heath, gorse, furze, or fern, wheresoever growing, to transportation for seven years, or to an imprisonment for any time not exceeding two years, according to the discretion of the court before whom the offender shall be tried. And by the 25th section it is provided that, as to all the malicious offences in that Act mentioned, the punishment shall equally apply and be enforced whether the offence shall be committed from malice conceived against the owner of the property in which the offence

shall be committed, or otherwise. The law therefore is distinct and clear, that the offence of burning barns and stacks and other property is punishable by death, at whatever time of the night and day it is committed, and that it is equally so whether it arise from mere malice—that is, a wicked disposition—or from a hostile feeling against a particular individual. None can doubt the wisdom of this severe law; and its execution, where the guilty shall be detected and convicted, will deter others from the commission of so dreadful an offence; and though there are many incendiaries whose atrocious acts are at present involved in mystery and obscurity, I trust that the time will arrive ere long, as it generally does in cases of crime, when their guilt will be revealed and punished even here.

I have thought it expedient to mention these provisions of the common and statute law to you, in reference not merely to the offences contained in this calendar, but to those also which have been of late so prevalent in the adjoining districts of the kingdom. It is desirable that the law on these points should be clearly and generally understood, in order that no one hereafter may err from an ignorance of its provisions. It is to the wise and firm administration of these laws that we must look for the restoration of our tranquillity. When this desirable object shall have been attained, there will still remain for you, gentlemen, and for those who are, like you, possessed of wealth and influence, a far more pleasing and not less important duty. You will have to prevent the future occurrence of such proceedings, by removing as far as possible the causes of them. I am well aware that to generous minds it must often be a subject of deep sorrow and mortification to find that, in many instances, their best endeavours to promote the good of others have been misconceived, or met with indifference and ingratitude. But even if this should have been the case, I am sure that you, gentlemen, will not be discouraged from continuing to employ your utmost exertions towards the improvement of the condition of your poorer neighbours. By giving to them an education which shall consist not merely in reading and writing, but in the knowledge of their various duties—by endeavouring to make them more prudent and more virtuous citizens, you will place the only effectual bar to the increase of pauperism and its consequent wretchedness. Poverty is indeed, I fear, inseparable from the state of the human race; but poverty itself, and the misery attendant upon it, would, no doubt, be greatly mitigated if a spirit of prudence were more generally diffused

amongst the people, and if they understood more fully, and practised better, their civil, moral, and religious duties. By your advice, therefore, and assistance on these important subjects ; by your relief of the distresses of the poorer classes, where they exist ; by your patient attention to their complaints, even where those complaints are from their ignorance ill-founded ; but, above all, by the force and effect of your own examples—by your loyalty to the King, your obedience to the laws, and attention to the duties of religion, you will, I trust, under God's good providence, prevent these evils from spreading, and retain and ensure the tranquillity of the realm and the happiness of the people. Gentlemen, you will now retire to your room, and proceed to the discharge of your peculiar duties on this occasion.

THE CHARGE DELIVERED AT THE COUNTY HALL, CHESTER CASTLE,

DECEMBER 6th, 1848.

GENTLEMEN OF THE GRAND INQUEST,

You have been called together at an inclement season of the year to discharge one of those important duties which devolve upon persons of estate and condition in this country—that of placing in a state of accusation those whose supposed crimes have caused their apprehension by justice, in order that the truth of the circumstances which are urged against them may be more fully and carefully investigated.

It is certainly in this county, though I am sorry to say not in the neighbouring one, very unusual to do this: the reason, judging from the calendar which lies near me, and seeing the nature of full half the charges contained in it, is, I presume, a desire on the part of her Majesty's Government that the trial of certain individuals who are accused of conspiracy and sedition should no longer be delayed, in order that, if guilty, the prompt example of their punishment may have a tendency, with God's blessing, to restrain and deter others from such dangerous offences; and that the peace and tranquillity of the realm, endangered by their practices, may be the better preserved. I am sure that you will readily make a sacrifice of the time and convenience which the exigencies of the public service seem to require, and that you will deem it to be your most bounden duty to assist her Majesty the Queen and her responsible advisers in this most urgent and proper object of their care and anxiety, merging, as I am sure English gentlemen always have done, and will do, all minor differences of opinion in the paramount determination to pursue the public good, and seek the peace of the whole realm. In this, at least, I trust we have at all times been, and by God's blessing shall continue to be, an united people.

Permit me to say to you a few words, however, on the nature

of the offences which have caused us to come together ; and if I venture to assign any causes for their occurrence, and presume to urge upon you any suggestions for their repression and cure, forgive me, for I do it in good faith, after some reflection thereon, and at least, if in no other way useful, my observations may cause you to reflect, and out of that may come the better fruits of your own more mature consideration for the public good. 'I speak as unto wise men : judge ye.'

He must have looked with a careless eye at what has been going on around us, who has not observed the transition state, so to speak, in which society now is, and the signs of impending peril which are manifest throughout, I may say, the whole civilized world. In the language of prophecy, to which at this peculiar season our Church calls our attention, we see or read of 'wars and rumours of wars—nation rising against nation and kingdom against kingdom.' We have felt famine ; we are dreading impending pestilence ; around us are the seas and waves of popular assemblies tumultuously roaring ; the powers of the world seem shaken and falling. Europe in the last year has been convulsed to its very centre. Its ancient dynasties, where are they ? Even the mighty fabric of ecclesiastical power seems crumbling to pieces at its seat at Rome ; and he whose great predecessors claimed presumptuously to confer and take away kingdoms, is now a fugitive, it seems, from his own people's infatuated violence.

Upon our own kingdom the same storm has fallen, but, blessed be God for it, with diminished violence. The causes of animosity which existed, and I fear still exist, abroad, are not found in such abundance here. Our people are free, and they know it. They have institutions not faultless, God knoweth—for what human institution is so?—but still bearing good fruits, and they love and respect them yet. They have a monarch whose private character and public conduct deserve their attachment, and they are still attached to her with loyalty and affection. Amidst privation, though distress has fallen upon them, they have not forgotten this. The heart of the people is yet sound ; and while that remains so, there is good hope for the people themselves.

There is, however, a reverse to this picture. It would be idle to deny the existence of severe distress. It is to be observed, also, in what state the population is, on which this distress has fallen. The labourer is lowered, inevitably perhaps, but still lowered, in the scale of society ; and at the same time, the

general spread of education, which has extended itself to him, and which has enabled a far greater number than in former times to read and write, has placed him in a situation to feel more acutely his relative inferiority, without proceeding far enough to enable him to understand fully the real causes from which his change of condition has originated, and the true means by which alone it can be palliated or remedied.

It is upon a population thus distressed and half instructed, that designing men have been too successfully practising their arts. One of the means which have been employed by these persons has been the dissemination of irreligious and seditious publications amongst the people ; and another seems to have been the assembling of large bodies of their unhappy dupes, in order, as they say, to discuss their grievances, and find out the best means of relieving them. Such assemblies will always produce their natural fruits. The people who feel the pressure of distress are led to believe that an organic change in the constitution and the laws would relieve them ; and, following their guides, proceed onwards till they arrive at open rebellion. And yet the whole experience of universal history would lead rational men to an opposite conclusion. Whatever be the physical privations of the mass of the people, it is clear that the immediate effect of insubordination is to aggravate their intensity.

An example, and a very plain one, will illustrate this. It is one whose truth I wish I could enforce upon my poorer friends, whose sufferings I do commiserate most sincerely, and would willingly, if I could, relieve them. In a late very interesting statistical account of Paris, I find that if we take the period just at the beginning of the French Revolution, following immediately, no doubt, on a period of great political oppression, the physical comforts of the people, who had had for some centuries, so to speak, no political rights, greatly exceeded those of the empire in its most flourishing days ; that they were still further depressed by the bloodless Revolution of 1830 ; and no doubt if we could now ascertain them, they would be found low indeed, probably at or below the point of actual starvation. I hold the book in my hand : let me read to you the results.

And let me premise beforehand that Vauban, Bossuet, and La Grange, three men of totally different pursuits, habits, and ideas—war, religion, and science ; generals, bishops, and philosophers—have each told us, in different language, what amounts to the same thing, that the richest and most comfortable nation

is that which can afford to eat the most meat. Now, let us see what was the average of the meat consumed in Paris in the year 1789 by the masses of the people; what it was in the empire; what it was at the Revolution of 1830; and what it probably may be now.

It is curious to observe that the people in Paris in the year 1789 consumed 147lbs. of meat per man. In 1817, which you will remember was the conclusion of the empire, it was reduced to 110lbs. 9 oz. In 1827, which was in the interval of time from 1815 to 1830, being the period after the restoration of the Bourbons, it kept its average at 110lbs. or nearly so—rather more than 110lbs. of meat per man. But after the Revolution of 1830, it fell to 98lbs. 11 oz. So that before the first French Revolution it was 147lbs., and after the last but one it was 98lb. 11 oz. And this is the criterion which those eminent persons, to whose opinions I before referred, have adopted, as to that being the richest and most comfortable nation which eats the most meat. Was, then, Paris richer and more comfortable before it had its political rights, than after it had its second Revolution? According to this, it was poorer in the proportion of 98 to 147; and God knows what is its condition now.

These are matters which it behoves the poor to think of, as well as the rich. This document suggests much matter for reflection. Observe how the continued peace following the restoration of the Bourbons kept the physical comforts of the people at a level from 1817 to 1827, and how the Revolution of 1830 immediately lowered them; and, above all, do not fail to observe how the period of the lowest political rights was the period of the highest physical comforts among the poor. It shows, therefore, that the one is not necessarily connected with the other.

Do not, however, draw from it so erroneous a conclusion as that such rights are not of the greatest importance. The only truth to be inferred from it is, that physical comforts and internal peace always go together. No doubt it may sometimes be desirable to obtain freedom even at the hazard of suffering. All I would urge upon my poorer friends is, that as this is so, it is expedient for them, before they disturb the peace for the sake of obtaining political rights, to sit down and first count the cost to themselves. They may lay their account with this, that it is certain if they disturb the general tranquillity, that they will be the poorer, and the worse off as to physical comforts; and then let them consider whether the political grievances under which they labour are such as to make it worth while for

them, in the doubtful hope of redressing them by force, to undergo the certainty of immediate suffering. I believe that, speaking of the constitution of this country honestly and fairly, no rational man can hesitate as to the course which he ought in such a case to pursue, and that he will remain quiet, seeking to redress his grievances by constitutional means, and not by insubordination, and the employment of physical force.

But this restraint is to be derived from increased knowledge alone. That is the way in which we have already arrived at this conclusion. Now, this brings me to the second point which I intended to notice, which is, how to palliate or cure the evils which, I fear at too great length, I have thus described to you. I will not detain you long upon this point.

It is too late, even if it were desirable (which it is not), to uneducate the poor. Our safety lies, on the contrary, in advancement, provided we advance in the right direction. We must fully educate them. We must teach them their duties to God and to their neighbours. As to their rights, we need not fear but that they will find them out from their present teachers.

But how are we to do this? Surely in the same way that a good father teaches his own children,—First, by an uniform course of kind and affectionate conduct towards them, he convinces them that he really loves them: then, even when he corrects their errors, he does it firmly, but tenderly. He shows them that, while he hates the fault and punishes it, he loves the erring child, and even punishes him because he loves him. The influence which he thus obtains, he uses to induce them to listen to the dictates of his maturer wisdom and more exercised powers; and they learn from his wisdom because they have first learnt to love him as a teacher. Just so must we do with the poor. The gentleman of estate, with his labourers—the opulent manufacturer, with his workmen—the tradesman, with his apprentices—the clergy, in their more extended sphere, with their flocks—in short, all of us, with our respective dependents, must make men feel that we sympathize with their sufferings and wish their real good; that we seek not theirs, but them; and that with us the name of brother is not a mere empty sound, but denotes in our vocabulary a member of Christ our Head, and a fellow-heir of immortality. Then, with what force will our exhortations fall upon their willing ears. Then, how easily may we convince those who have become well assured of our sincerity and love. Then, how easy will it be to demonstrate, and how

willingly will the demonstration be received, that the accumulation of capital in the manufacturing districts is really a blessing to the public, by providing in the time of prosperity and abundance (like the corn of Joseph in Egypt) the sources out of which succeeding years of scarcity may be fed, so that all shall share in the ultimate benefit to be thereby derived to the capitalist. And how willingly, then, will men acknowledge that the large and extensive estates of our nobility and gentry are really a blessing, by being kept together, not for private luxury, but as enabling their possessors the better to promote agriculture, the more easily to establish schools, to build churches, and to civilize and improve the whole face of their surrounding districts. How easy, then, to show that the universal and compulsory subdivision of land, now unhappily existing in France, is a great and increasing cause of ruin and weakness to that afflicted country—the more afflicted, because it seems unconscious of one of the real causes of its sufferings.

Let me read the details, also, of that state of the law, because that is an alteration which is proposed by some to be introduced into this country—viz., the compulsory subdivision of land. I do not doubt but that you are perfectly well aware that in France, instead of the law of primogeniture existing, every property is subdivided by law, whether the property be large or not, among all the children. Let us see what the effect of that is upon agriculture, and what is the evil that it introduces into the country itself. I read from the same book as before:—‘This imperative *morcellement* was much arrested by the twenty-two years of war, up to the year 1815, which settled a number of co-heirs. One law gave a man a bit of land; another marched him off to the Tagus or the Danube, where perhaps he left his bones. But in 1815, by the peace, they were released from the army, and they entered France.’

Then the writer goes on to describe the destruction of all the great properties which ensued upon the co-heirs coming in. ‘Never, perhaps, since the creation of the world did the human race perpetrate a similar suicide. Sylla forced his 6000 prisoners to slaughter each other, but here all these destructions have been voluntary.’

The writer then goes on to show the number of properties into which France is divided, which is enormous. ‘Not,’ he adds, ‘enclosures of the same farm in juxtaposition to each other, but more like our lands, lying in common fields in England, perpetually intersected by those of their neighbours.’

Then he goes on to show how property passed from one to another. 'More than one-fourth of the whole fee-simple of the country has passed in ten years from the hands of its owners into the hands of complete strangers.' Not, you see, remaining in the family, but going into the hands of complete strangers. Sales multiply owners, and so they go on. And yet the owners have managed to charge an income of 60 millions a year, with a debt bearing an interest of 22 millions. This debt increases, and must continue to do so. Avidity to possess land, the fancied independence it confers upon its owners, act upon the four and a quarter millions of owners unceasingly. These men, says Michelet, fight as it were for their lives, but usury fights against them with a force of four to one. Their land brings them in two per cent., and they pay eight per cent. for borrowed money.

This is the account given to us by people who have been taking the statistics of France upon this subject ; and the evil is increasing, and will increase, till they have the wisdom to go back from the present system, and come to the same law, or nearly so, under which we at present live, and which people are proposing to change in this country.

Hear what Mons. Louis Blanc says upon that subject. He is speaking upon this very point. He is comparing, also, the different conditions of the English and the French labourer, and describing at the same time the evils arising from this forced *morcellement* carried on in France. He says, at the close of his observations, 'These English weavers are very unhappy, because they can only obtain bread and work in a precarious manner. We will only observe, that there has been in all times far more inequality in France than in England in this respect. But'—(and do not let us forget that this is the testimony of an eye-witness)—'but we are ourselves an eye-witness that the Revolution has increased these inequalities tenfold.' The Revolution of which he speaks was the Revolution of 1830. Is it not surprising that the person who has written this, in his *Histoire des Dix Ans*, should have taken an active part in another and, I fear, more disastrous one in 1848 ?

I will only add one word more upon this part of the subject. We have the winter before us. Distress at this season of the year is usually more prevalent than at any other time. I would urge upon you the opportunity which this will afford of showing sympathy and kindness, the greater in proportion as the emergency is the more urgent. This may, perhaps, be one

of the objects for which God sends suffering, that it may tend to re-unite those whom prosperity has severed. It is one of the uses of adversity that it calls forth the best feelings of the human heart ; so that, as has been well said by our poet—

‘The bud may have a bitter taste,
But sweet will be the flower.’

Gentlemen, a few observations will now remain upon the rest of the calendar. Here is one case of poisoning. This will be supported by a chain of circumstances which will require careful investigation. Those circumstances should be such as that the conclusion from them is, that the accused not only *may* be, but that, if true, he *must* be, guilty of the offence. That will be the criterion by which I should wish you to be guided.

The rest of the calendar seems to require, to gentlemen of your experience, no observation from me. I shall, if there be any difficulty (which, however, I do not anticipate), be very happy to give you at all times my best assistance.

Gentlemen, I have now finished what I have to say ; and I pray God that He may give you His help in the discharge of your important duties.

SENTENCES OF THE PRISONERS.

The first of these relates to a batch of prisoners who pleaded guilty to an indictment charging them with conspiracy and riot: the second to certain prisoners convicted of that offence after trial.

YOUNG men, you have heard what her Majesty's Attorney-General has now said. He has mentioned to me many topics which are very much in your favour. One of them, I cannot but observe, is remarkably in your favour, and that is your abhorrence of bloodshed. For when you heard of that dreadful murder which was committed at Ashton, which next week we shall have to try, you immediately dispersed : you would have nothing more to do with it—you washed your hands of the blood of innocent people—and you dispersed and went about your business. That was a very praiseworthy act on your part. It deserves much commendation, and shows me that, though

you are misguided, you are not so misguided but that you know very well how to distinguish between what is right and what is wrong.

I know that the people of your neighbourhood have been suffering great and severe distress, and I know and feel as much as I can do upon that subject. It is very much to be desired by us all that that distress should be mitigated and relieved. But, be you assured, I speak it in perfect good faith for your advice and assistance; be you perfectly assured that nothing but evil can come of violence—nothing but an increase of distress from insubordination. The universal history of mankind tells us this, and when you are older—for some of you I see are only boys, children of seventeen and nineteen—you will see it to be true. What can you know of political science? Why should not you suppose that older and wiser heads are governing the country, for your good and the good of all, better than you could do? Why should you suppose that children of seventeen, boys of nineteen, and young men of twenty, can know anything (ignorant as they must be from the situation of life in which they stand) of governing a kingdom? How can they know what would do themselves real good?

If I were to walk into a shop, and were to see a large quantity of machinery around me, supposing me to be wholly ignorant of machinery, should not I be a very presumptuous man if I were to propose to alter the steam-engine, or to show you how the spinning-jenny could be made to work better? You would laugh at me if I were to propose to you to alter a wheel which you knew was essential to the construction of the machine. If I were to propose to make that wheel twice as big, you would say it would throw the whole machine into confusion, and instead of having a machine which, though it does not act perfectly, yet works very well, we should have a machine which would not work at all; and you would act as sensible men in laughing at me, and in turning me out from the machinery, if I proposed by force to put the wheel in as I wished.

Now, just such a thing as that is what you are trying to do to the government of the country. There are wheels of government, and though they do not, as no human institution ever can, work perfectly, yet upon the whole the government is working for the general good of the whole mass of the people; and if you were to put any new wheels in without fully considering, as a skilful man would do, whether they would improve it, you would very likely throw out the whole machine of

government, instead of improving it. Be you assured that it requires a great deal of understanding, a good deal of thought, a good deal of wisdom, and a good deal of reading, to know what is for the good government of the people of this country.

Do not let me be supposed by you, or by anybody else, as stating that anything is perfect. I know it is not. But this I know, that the good of you, and of all persons like you, is better obtained by your own quietness and industry, than by any other means. Be you assured that the people who teach you that alterations in the government would alter your condition materially for your good, are mere quacks. They are like people who bring forward a particular pill, which is to cure all diseases. It is their quack pill which cures all complaints ; and the foolish dupes who take it are very often killed instead of cured. And that is the case with you. You are brought into this difficulty by having trusted to quacks who come round the multitude, instead of to regular physicians, who would have told you that, though you do suffer, the only way to relieve your sufferings is for you to be quiet, for you to be industrious, for you to be sober, for you to be temperate, for you to be religious. That is the best way in which you can conduct yourselves.

At the same time I must impress upon the people around you, who are better informed and in a higher condition of life—I mean those who are your employers—that it is their duty also to conduct themselves towards you as one Christian man should do to another—to look after you—to see how you are dealt with—to see that you are properly instructed to the best of their power and ability—and to mitigate the distress under which you labour. That is their duty—the other is your duty. If both classes perform their duty all will be happier : they will be kind, and you will be contented.

Now listen to my advice. It is given to you in perfect good faith. It is the best advice I can give you ; and from the longer experience of life which I have had than any of you—some of you are younger than my children—I give it to you as I would to my children ; and, remember, being here, it is your duty to take it. It is your duty to remember the mercy which has been shown you to-day, and to be loyal to that government, which, as it is strong, so also, in your particular instance, indeed has shown itself to be most eminently merciful.

You may be each of you discharged upon entering into your own recognizances to be of good behaviour, and to keep the

peace towards all her Majesty's subjects for two years. Remember, that if you misconduct yourselves, you will, at all times be liable to be called up for punishment under the indictment to which you have now pleaded guilty. Pray attend to what I have said. It is meant for your good, and I hope you will not forget it.

You have been convicted of various offences connected with the unhappy outrages which took place at Hyde, partly on the eighth and previous days; the outbreak itself taking place on the fourteenth day of last August.

One cannot but observe that there was a very considerable and simultaneous rising intended to take place over a great part of the manufacturing districts at that time. The jury, however, in your case—those of you I mean who were convicted of conspiracy—have taken the more merciful view; that is to say, they have been of opinion that it was a conspiracy connected only with Hyde and its immediate neighbourhood, and that your object was to disturb the course of trade in that district, rather than to alter the state of the government of the United Kingdom at large. They have not found the same with respect to one of you, Mantle, for they have found him guilty of a larger conspiracy, and probably wisely, for if the speech made by him on the eighth of August had been given in its full length at the trial which took place yesterday, as it was at the trial which took place the day before, the jury would probably have thought, with the whole of that evidence before them (which, by the mercy of the Attorney-General, they had not), that the conspiracy was of the larger, rather than of the less aggravated description.

I would wish to impress upon you all, that which I have also impressed upon a set of persons who have been just treated with the lenity of the Crown, that these disturbances produce exactly the opposite effect to that which the unhappy dupes, who compose the greater part of them, intend. They think, that by these disturbances they are to relieve themselves from distress. The real truth is, that these disturbances cause a great increase of the distress. The distress perhaps originally causes them, but they cause an aggravation of the distress, just as much as if you were to give a person in a fever a large dose of brandy by way of curing him. It would only increase the fever instead of relieving it.

At the time when you made this outbreak, there was a great disturbance almost throughout all Europe: and this country remaining at peace and in tranquillity (if it had pleased God that it should so have done) the capital of other countries which had been disturbed by the outbreaks there would have flowed hither, the capital so flowing in would have produced work, and the work so produced would have diminished the distress, and the general distress being diminished, yours would have been diminished also. But if you create outbreaks in this country, then you reduce capital to the same situation in this country in which it has been in others; it has a tendency not to come here; so that your outbreaks cause the very distress, the very evil of which you complain. If you would leave it alone and be quiet, then the outbreaks in other countries, unhappy as they are for them, would not be unhappy for you, for you would have the benefit of your tranquillity, as they would suffer for their insubordination. Instead of this you prevent the cure which God was working on your behalf.

I am not the first to speak this to you. I have seen it very admirably put to some of the working people in London in one of the newspapers which was published a short time ago. It made a great impression upon my mind. I wish you could all of you have read it. It would probably have made some impression also upon you.

The law of the country, however, must be vindicated. People who defy the law must find that they are breaking their hands against a rock, which is not to be broken by their puny violence. The law of the country goes on in its usual ordinary straightforward course. The great bulk of the people obey it and love it, because they know it is just; and you yourselves shall know that if the law be severe it is also just in your case. I hope you have had a fair trial. I summed up each case individually and separately to the jury yesterday, perhaps at too great length, but it was in order that no one of you might suffer for the injury which had been done by any other person; that each should stand upon his own footing, and suffer for his own deeds and those alone.

The jury found, and they could not but find, that you were guilty of the offence with which you were charged. And what is that? It is an offence which might have issued in murder; which unhappily, in the neighbouring district to that in which you are situated, did issue in murder. It might have done so in one instance which came before us yesterday, for one of your

leaders put a pistol to a man's mouth, though the crime was prevented ; and I do not forget that, and I shall not forget it in the sentence which I am passing upon the man who prevented it, for I hope I do not forget any of those circumstances of mitigation which fairly arise out of any of your cases. I remember now that he did prevent the man from doing violence upon that occasion, and he will find the benefit of it in the sentence which will be passed.

But the law must be vindicated by severe punishment. Believe me, I regret very much that it falls to my duty to do this. I know that most of you are decent respectable people ; that you are not like the ordinary class of persons who come into a court of justice ; that you are not thieves, that you do not break through and steal ; that you are people who have good connexions, so to speak—respectable people connected with you who will suffer by your suffering. Probably many of you have wives and children ; they will suffer in your suffering. I feel for them ; I feel for you. I am sorry it is my duty to inflict severe punishment upon you, but I must do it. The law must be vindicated, and people must be convinced that these are dangerous offences for them to commit. Therefore, you must all of you, I am sorry to say, suffer severe punishment.

The remainder of the sentence relates wholly to the individual cases.

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# OBSERVATIONS ON THE MINISTERIAL BILL

FOR THE

## Abolition of the Removal of the Poor.

*A portion of the Charge delivered to the Grand Jury at  
Hertford, at the Spring Assize of 1854.*

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BEFORE I conclude these observations, I wish to call your attention to a matter of some interest to you all. You are aware, no doubt, that the Government of this country are, with the most laudable motives, proposing to alter in a very important manner the Laws as to the Settlement and the Relief of the Poor. Now, such an object it is the duty of every good subject to assist, and to strive to make the mode of accomplishing it as perfect as possible. As I don't altogether agree—if I understand it aright—in the plan proposed, I wish to state to you my reasons, and to call the matter to your notice. It is only by calm and careful, but candid discussion, that we can hope to arrive at the truth, which we all desire to do.

Now, as I read the plan, the Government propose to abolish the Law of Removal, but not the Law of Settlement. It is difficult to understand what this means. I conceive that there must be some error in this matter. The right to relief, they truly say, depends not on settlement but on destitution. But the right to relief from the parish A (or the union A, if union settlements are adopted), so long as destitution lasts, depends on the settlement being in A. If the settlement be in B, the *only* mode of compelling B to relieve is by means of the removal of the pauper from A to B. If, then, you simply abolish removals, you practically transfer the pauper from B to A; in other words, you really, although indirectly, abolish the Law of Set-

tlement also, which you say you mean to retain. But ought this to be done if the admitted evil attending removals can be otherwise remedied?

The use of the Law of Settlement is to distribute by some fixed rule the whole expense of the relief of the poor amongst the whole body of the ratepayers rateably and fairly. No doubt, a national rate would effectually do this. But how can it be possible, in the perpetually fluctuating value of property in this great country, to assess equitably any such rate on the whole kingdom? How unequal the land-tax—a rate assessed on only one species of property, and that *fixed* property—has in the lapse of years become! The thing is impossible to be done practically, unless at a ruinous expense, and by continual valuation. But if possible, it would not be desirable. There are other fatal objections to it. To draw on a national fund by local agents for local purposes would enormously increase the whole amount of the burden. We have already greatly increased the expense of criminal prosecutions, by transferring them from the County-rate to the Consolidated Fund. And yet counties did not ever afford, as to their rates, half the economical checks which the local supervision of parishes does to the poor-rate. To transfer the relief of the poor to a national rate, would be to remove the check of parochial care and economy, and to exaggerate the tendency towards parochial patronage and jobbing.

If, then, a national rate cannot succeed, we must devise some other mode of rateable distribution of the whole burden, and one which is not inconsistent with local supervision. And such a rule the Law of Settlement, if simplified and amended, seems to afford us; for then each district is charged with its settled poor, and has a direct interest in their welfare and prosperity—for it has to pay for their destitution. And then, too, its limited area affords the opportunity for effective care and superintendence.

But this Law of Settlement has its attendant evils also:—1st, there is the hardship arising from removals to the poor themselves—a hardship, I think, intolerable, and happily, I trust, unnecessary; 2nd, there is a system of fraudulent jockeying of one parish by another, by pulling down cottages and the like, in order to shift the burden unfairly from themselves to their neighbours; and 3rdly, there is the expensive litigation between parishes disputing their liability to the burden. Can we, then, remove these evils, or greatly diminish them, still, however, retaining the main objects of the Law of Settlement

—the equal and just distribution of the relief of the poor over the whole country? I think we can.

First, then, I would agree with Mr. Baines in abolishing removals altogether; but secondly, after thus providing that the destitution of each pauper shall be relieved by the parish in which he resides, I would provide that this expense should be repaid by the parish to which the pauper belongs. And in order to cure the second and third evils above pointed out, and to give an easy method of obtaining this repayment, I would abolish all the present methods of obtaining or deriving a settlement, and provide that the original place of birth shall *finally and unchangeably* be the settlement of every emancipated person.\* The jockeyings before spoken of are principally—I do not say universally—resorted to for the purpose of preventing the acquisition of *new* settlements. You materially take away the motives for this by making new settlements impossible, and the proof of the new birthplace settlement will be easy. The register will prove the place of birth; the remaining fact alone is the identity; and the pauper is, by the hypothesis, always alive to prove it. As to families unemancipated, children must follow, during the life of both their parents, the settlement of their father; if he be dead, of their mother; the wife, of her husband. Only one fact—the birthplace of the living head of the family—determines the settlement in these cases also.

The mode of determination, in case of dispute between parishes or unions as to repayment, may be the decision of the Poor-law Inspector of the relieving parish or union, on affidavit submitted to him by both sides. This order should fix the liability and the amount to be repaid. I venture to think that there will be little, and at all events no expensive litigation, if this plan be adopted; and that the hardship of removals will be put an end to—the unseemly jockeyings to prevent settlements diminished materially, and yet the local supervision and economy, and the stimulus to promote the welfare and prosperity of the labourer, which the present law of settlement does in a great degree promote, retained to the advantage both of the labourer and the country.

It may be objected to this scheme, that it has been already in some sort tried and has failed—for I dare say you all know that there was formerly an Act of Parliament (8th and 9th Wm. III., c. 30) which enabled parishes to grant certificates of

\* See a qualification to this, p. 194.

settlement of a pauper and his family, and so to enable the poor to migrate without being liable to removals ; thereby, however, rendering the certifying parish responsible, as I propose, to the relieving parish. But why did this fail ? Because the general power of removal continued, and the parish was therefore not compelled to relieve, but might remove the pauper ; and, secondly, because the parishes would not certify—generally preferring to take the chance of the pauper acquiring a new settlement ; and the giving such certificate was left in their option. I leave nothing in their option. I propose to make a new settlement impossible, and to abolish altogether removals. This is my answer to this objection.

It is to be observed, also, that this plan will work equally with union settlements (Mr. Baines' plan) as with parish settlements. But I much prefer parish settlements to union settlements. They give a better opportunity for supervision, and a greater premium to those benevolent and, as I think, wise persons, who strive to lead their poorer friends and neighbours to prudent habits of life, and that independence and self-reliance which, in a well-regulated state, ought to be the normal condition of its labouring population. And if I mistake not, the institution of union settlements will cause a most enormous expense, by requiring a new valuation throughout the country ; as I believe—though you, no doubt, know better than I do—that the rating in the different parishes is not universally on the same principle. The union rate will, in fact, be the same thing in each union as a county rate is in a county,—where each parish is to be valued in relation to the other parishes—as well as each estate in each parish is valued in relation to the other estates. And besides, one great object in abolishing removals is to set free the agricultural labourer—to go to a distance far beyond the union, that he may take his labour to the highest market, whether that be of an agricultural, commercial, or manufacturing description.

\* [There are two other subjects connected with this matter on which I wish to add a few observations. 1st. It seems to me that it may assist in solving the difficulty as to Irish pauper immigrants into this country—if we make their irremovability depend on their producing a certificate of their place of birth, from the overseers or other officers of the union to

\* This has been added since the Charge was delivered.



which they belong in Ireland—and those authorities should be required by law to grant such certificate at the request of the labourer desiring to migrate into England. That being done, the parish in England by which such pauper may afterwards be relieved, should have the amount repaid by the certifying Irish union—in the same way as between English parishes, or, as the case may be, between English unions, if that mode of settlement be adopted. This I conceive would effectually prevent the shoals of Irish paupers being sent over, as it has been said in some cases, by the connivance and assistance of Irish ratepayers. But, secondly, I would add also a suggestion, as to the proper mode of dealing with close parishes. In cases where that fact is made out, the old method of rating in aid may be resorted to. The parish which, by pulling down cottages and the like, seeks to throw the residence of its labourers into other adjoining parishes, should be rated in aid to the parish relieving, for the support of its non-resident labourers and their families—and the children of all such non-resident labourers should be deemed by law to be born, and therefore finally settled, in the parish where the parent is working at the time of their birth, and registered accordingly. And this I think would cure that evil, by removing the temptation.]

I recommend these suggestions, gentlemen of the Grand Jury, to your calm and earnest thought. I have long been of opinion that no one has a right to find fault with the plans of another, unless he is prepared to suggest a better himself. If, therefore, I disagree from the plan of Mr. Baines, I do so for the above reasons, and produce what I judge to be a better scheme. I, long before his time, had for nearly twenty years the same personal acquaintance as he had with the Settlement Law, learnt in the school of the same West Riding sessions, whence his experience comes. I mention this, to excuse myself for giving my thoughts on this subject to you. But I should say to you—and to all who may consider this very important question—‘Don’t act on any one’s authority, ‘but prove all things’ (as St. Paul advises us in even higher matters than these), and ‘hold fast to that which is good.’’ If your thoughtful and experienced minds can find any better plan than either that of Mr. Baines or mine, it will give me far more real satisfaction than any adoption of my own views could give me.

ON THE  
REFORM OF YOUTHFUL CRIMINALS BY MEANS OF  
REFORMATORY SCHOOLS,

*Under 17 and 18 Vict. c. 86,*

BEING PART OF THE

*Charge to the Grand Jury of Yorkshire,*

AT THE WINTER ASSIZE, 1854.

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AND now permit me, in conclusion, to advert to a topic which does not seem out of place on an occasion in which we are called together at what used to be in this county, when I first knew it, an unusual period of the year for the purpose of administering the criminal law. We have in that period over which my experience extends—the interval between 1811 and 1854—a great and apparently permanent increase of crime. Whence does it arise? How is it to be diminished? These are questions of no light moment to us all.

It is not my intention to discuss the former of these questions, to which I am really at a loss to give any sufficient answer; there being in truth various causes probably conducing to produce this sad result. I would rather desire to direct your thoughts to the second, which is one (to me, at least,) of far greater interest. How is this increase of crime to be met, and, if possible, repressed?

To this question, if you ask it, you always receive one answer, 'By improving the education of the people.' True enough, no doubt, but labouring under one difficulty,—that this usual cantilena leaves us in general no wiser than we were before. For the real question is, What is that education which is to produce this effect? You will remember that we are speaking of that class of our population alone out of which our criminals come. This consists of individuals of as various characters and dispositions as possible. Now, to educate some of these pro-

perly, would be to apply a process which would be useless—perhaps worse than useless—to others. Our punishments ought, no doubt, to be directed towards this object of reformation : but how far are we at present from any scientific discrimination in our punishments ! We do but administer, so to speak, stronger or weaker doses of one and the same specific. Six weeks' hard labour ; three months' hard labour ; nine months, and the like. But what is all this, except to imitate the quack, who, for each varying disease (say fever, gout, paralysis, or the like), says, ' Take my medicine,—five pills for the first, ten for the second, and so on.' We laugh in scorn at such folly ; but are we wiser ourselves ?

It may, however, be said—and I admit the value of the answer, and with some additions to it, would admit its complete truth—that the discipline of each gaol may supply the variety of medicine adapted to each individual case. A judicious Governor—a humane and intelligent Chaplain—may supply what is wanted. And so they may : but then in practice—and I wish to call your attention to it—there is this difficulty : we do not suffer these judicious and kind men to have sufficient time effectively to do this. Crime, believe me, is a disease, a chronic disease, in most of our criminals. Some eminent physiologists in modern times have even connected it with a defective organism of the brain. Without discussing this, which might lead me into doubtful disputations on the connexion of mind with the organism of the body,—and remembering that those who hold this do, God be praised, also hold that moral training and religious influences do also react on and materially affect even the bodily organs, I shall simply call your attention to the practical result, that if this be so, and if crime partakes in some sort of the character of a disease, you must carefully examine in detail its symptoms, and give full time for the remedies, if they are to be effectual, to operate. And this brings me to the observation, that to punish with short terms of imprisonment young or first offenders, is by no means a wise or a humane proceeding. Then only—I fear that must be admitted—is the chance of reclaiming them. Will you let me call your attention to the facts detailed in the book before me—*Combe on Criminal Law*, p. 22 ? The author of that very striking and intelligent work says this :—

' In 1825, the late Mr. William Brebner, Governor of Glasgow Bridewell, framed a table, founded on an average of ten years' experience, to show the effects of first sentences for

different periods of confinement, of which the following is a copy :—

Of Prisoners sentenced for the first time to 14 days' confinement, there returned to gaol for new crimes, about . . . 75 per cent.

|                     |       |
|---------------------|-------|
| 30 days . . . . .   | 60 „  |
| 40 days . . . . .   | 50 „  |
| 60 days . . . . .   | 40 „  |
| 3 months . . . . .  | 25 „  |
| 6 months . . . . .  | 10 „  |
| 9 months . . . . .  | 7½ „  |
| 12 months . . . . . | 4 „   |
| 18 months . . . . . | 1 „   |
| 24 months . . . . . | None. |

But this last was not for want of cases, for—

‘During the ten years (which ended on the 25th December, 1825), 93 persons were committed for the first time for two years, of whom not one returned. Mr. Brebner did not assume that all who did not return to his prison were permanently reformed—for they might have left the district and committed crimes elsewhere—but he adds, that when prisoners came back two or three times, they went on returning at intervals for years; and that many of those who were committed for short periods for first offences, were subsequently transported or hanged. In that prison strict discipline was maintained, but the prisoners were trained to industry, and educated with something like a paternal regard to their welfare after liberation; and he ascribed the salutary effects of the prolonged confinement partly to dread of renewed punishment, and partly to the habits of order and application acquired in gaol.’

I have read this passage, as it affords materials for serious thought. You will observe that the increase of the severity of punishment for the first offence, is *invariably* followed by a less per centage of recommittals. You will observe also the startling consequence, that after coming back two or three times, they returned, at intervals, for years; and that many who received small punishments at first, ended with capital convictions. Do not, therefore, I beseech you, try at your sessions to gain a character for that spurious humanity, which is real cruelty, by neglecting to punish effectually at a time when the impression on the criminal, if ever, may be really made. But severity in an extended duration of imprisonment, though essential, is but one step,—and a bad one, if not accompanied by proper discipline afterwards. What should this be? And first

let me speak of the youthful part of the criminal population. I read from a Report as to the Redhill establishment—a farm of 130 acres, devoted to this object—(*Combe*, 77—79.) The passage is as follows ; it is taken from one of the returns made to the Government :—

‘Two main objects,’ says Mr. Tufnell, ‘were contemplated by the removal of the institution from London to the farm at Redhill. First, it was thought that agricultural work afforded more likely means for the reformation of habits, and for implanting an industrial character, than manufacturing occupations, in which children must necessarily be massed together in considerable numbers. Secondly—and this was by far the most important part of the scheme—it was intended, instead of keeping them in one large undivided establishment, to separate them into distinct families or households, each under one head, who should be responsible for all the members of the family. It was thought that more individual superintendence, and more kindly domestic influence, might thus be substituted for the ordinary mechanical and formal discipline that necessarily prevails when large numbers are congregated together.

‘The boys who compose the school, 178 in number at the date of my visit, may be divided into three classes. First, there is the voluntary class, who come entirely of their own free will, consisting of youths tired of a life of vice and crime, and wishing to reform. Secondly, there is the compulsory class, being boys who have been sentenced to transportation, and have received a pardon, conditional on their submitting to the regulations of this establishment. Thirdly, there is a class sent by their parents or immediate relatives for reformation, and who may be said to be compulsorily detained, so far as the parental control may be considered compulsory.\* Every youth received is criminal, and has been convicted, except a few received as children of convicted parents ; and in two or three instances boys have been admitted simply to save them from the consequences of a course of criminality to which they had become addicted.

‘The inmates are divided into four separate households, which are in a great measure kept distinct, each under a Superintendent, responsible only to the resident Chaplain, who is supreme Director of the Institution, subject, of course, to the

\* For this latter class, a payment—usually 5s. per week—is asked ; but in case of poor parents much less is taken.

Committee, who meet every fortnight. Two of these households consist of fifty each ; one embraces sixty of the older lads, and the fourth contains twenty lads employed in the stable, cow-house, and farm-yard, who are changed for others at the beginning of each month. The class of sixty is considered too large, and it is intended to diminish it, and to add to the farm-yard class of twenty. As it is considered that the chief cause of the past offences and immorality of the inmates is the want of steady habits of industry, by far the greater portion of their time is devoted to hard work, in which they are generally engaged from nine to ten hours daily. Each lad receives for his labour a payment, varying from 1*d.* to 3*d.* per week, according as his work is well or ill performed ; but wherever it is possible, he works by task. This latter mode appears by far the best for implanting industrious habits : and I can bear testimony to the energy and good-will with which the labour appears to be performed. Many of them, during my visit to the school, were engaged in brick-making, which is one of the most laborious occupations to which a labourer can be put : and I never witnessed a heartier exhibition of unremitting industry. While at work, they are scattered over the premises in small parties, under industrial superintendents, it being deemed an important object to prevent the congregating in large numbers, which, with this class, often leads to immoral conversation. Every boy attends school for three hours on five mornings in each fortnight, in addition to the evening reading, and to the extra schooling of very wet days, when the usual employments on the farm are interrupted.

‘The punishments consist of confinement in light cells, and of flogging, which last, however, is very rarely inflicted—not oftener hitherto than once in five or six months, and only for disgraceful offences.

‘I attended the schools during the hours of instruction, which is imparted directly by the masters, with no aid from monitors or pupil-teachers, which are inapplicable to schools of this description. The masters appear competent to their work ; but owing to the neglected state in which most of the lads enter the institution, the standard of acquirement is very low. Of 150 who were admitted last year, 50 could neither read nor write, 70 could read and write a little, and only 30 could read and write well.

‘*There are a few youths of superior education, but these are by no means the best conducted; and all the teachers concurred in*

*opinion that those whose intellectual capacity was the highest were not those who gave the least trouble, or were the most trustworthy, but rather the contrary.'*

On this the Chaplain writes :—

*'Judging from the boys received into the Philanthropic, their criminality does not arise from want of school instruction. I have had as many good scholars as bad ones ; and most of those unable to read and write have been at school, or rather have been sent to school, and put in the ordinary paths of what it has been the fashion to call education. But in all there has been no restraining or impelling force even to keep the boy at school, far less to regulate his habits and associations during the hours when the school is not opened to him, and when his parents are mostly employed, and absent from home.'*

I beseech you all, gentlemen of the Grand Jury, to observe this ; for this it is, I venture to assure you, which constitutes the true difference between the education which really restrains from crime, and that mere knowledge (not education) which only gives the criminal greater power to execute his criminal purposes.

Mr. Tufnell proceeds to say : 'On these grounds it is obvious that little or nothing is to be learnt from an ordinary school examination of the youths in this institution. The school teachers are all industrial and moral, rather than intellectual superintendents ; and their time is chiefly taken up, not in giving literary information, but in managing the tempers, reforming the habits, and generally regulating the dispositions and behaviour of those who are placed under them ; in other words, their duty is to impart education in its highest sense, and on this, as it appears to me, dependence is very properly placed for attaining the object of the society, the reformation of juvenile offenders.'

He then proceeds to give us the results of this most interesting experiment : 'The number of youths that have been received at Redhill since the school opened in 1849 is 461, up to the 1st of June, 1853. Of these, 289 have been discharged in the following ways : 157 have emigrated either to Australia or America ; 1 has been sent to sea ; 70 have been apprenticed or assisted to employment in England ; and 60 have been discharged at their own request, or as unimprovable, or have deserted. Of this latter class, however, several have been ascertained to have subsequently reformed, the good seed sown in them while within the walls of this institution having at a

later period produced its fruits. The success that attends the operations of this society may be epitomized as follows: Of the whole number of criminal boys received, 75 per cent. are reformed, and become honest and industrious members of the community; 25 per cent. relapse into their former courses, at least for a time, though several of these eventually shake off their evil habits, and turn to the paths of honesty and respectability.'

Now, if such results as these, or anything like them, can be attained by reformatory schools for young criminals, you will by promoting them have done much for humanity, and, give me leave to add, for economy also. For if you take into account the amount stolen, the expenses of the police to watch offenders, the cost of prosecuting and afterwards maintaining them in gaol, I believe you will find that the cheapest as well as the most humane mode of treating criminals is to reform them. And this you will be enabled to do by adopting the provisions of an Act of the last session of Parliament, which I hold in my hand.

By that Act, 17 and 18 Vict. c. 86, it is provided, that the Home Secretary, on application made to him by the directors and managers of any Reformatory School, may direct one of the inspectors of prisons to examine and report to him upon its condition and regulations. The Home Secretary may then certify under his hand and seal his satisfaction, and that the school is in his judgment useful and efficient for its purpose, and such School shall thereupon be held to be a Reformatory School, under the Act.

By the second section, if any person under sixteen years of age shall be convicted, either by indictment or summary conviction, it shall be lawful for the court or convicting magistrates, in addition to the sentence of imprisonment for fourteen days at the least (thus you see confining its operation to offences already punishable with imprisonment), to direct such offender to be sent at the expiration of his sentence to one of these certified Reformatory Schools, to be named in such direction, the managers of which may be willing to receive him; and to be there detained for a period of not less than two years and not more than five years, and such offender shall be liable to be detained pursuant to such direction.

There are then provisions for defraying the maintenance of such criminals, by the Government, in the case of poor boys, wholly or in part; and in other cases by the parents of the



criminals themselves, to a limited amount in relief of the Government. All this, as it appears to me, most usefully and admirably provided. And thus my recommendation in an earlier part of my observations with respect to the necessity of a long imprisonment, even to the extent of two years, will be made less apparently severe and more effectual by substituting fourteen days' imprisonment and two years' detention in a Reformatory School, for this long imprisonment. All you will have to do will be to provide the building, and to devise, with the advice of the Secretary of State, proper regulations, and to be at the charge of maintaining the necessary officers. The criminals will be at the charge of the Government.

I have spoken hitherto of young offenders, but the same principle, *mutatis mutandis*, is true for the adults also. An adult convict is but an overgrown wicked child, who has erred from inherently vicious dispositions, defective instruction, or evil example. He is only in his habits and organization a child grown larger and stronger, but the same method of reforming him must be, as for children, to change his habits—to excite his powers, dormant as yet, of moral restraint by firm and wholesome severity, accompanied however with kindness. Depend on it he has a heart, though at present encrusted over and insensible from misery, perhaps, and vice.

Try to touch that heart,—let him feel that though you punish, you do it for his good,—substitute firm and gentle severity for mere unreasoning vengeance, and cultivate what still is left of moral power originally possessed by him. Quench not the smoking flax of his agonized repentance, and you will have a good chance of success even with him. But treat him firmly,—do not spare to make him suffer for his crime. What he wants is moral power to resist temptation. In this, as it seems to me, the evil of penitentiaries, which are solely dependent on the effect of separate imprisonment, consists. The defect of mere separate imprisonment is this, that the patient is by it too often *subdued*, but not *reformed*. He still wants the strength which *social* habits alone can give him, to fit him for a return to the world from which he has been shut out for a long period. He is perhaps convalescent, but not cured, and it ends too often in a fatal relapse. Besides, it is a discipline which does not suit all; some require to be subdued, others to be supported; and for this reason there should be some prison or penitentiary in the which, after separate confinement, the prisoner should carefully and gradually be accustomed to work in com-

mon with others before his ultimate discharge. For the most part he should be subjected to hard labour, skilled or otherwise, for this is the best remedy and security against relapse. Not, as I think, to be unaccompanied with some profit arising from that labour and given to the criminal. God governs us all by rewards as well as punishments; why should we not, at however remote a distance, try to follow the course of His government, which is always the wisest and best?

I have now, perhaps at too great a length, offered some suggestions on these important subjects to you; I wish you to turn them in your own intelligent minds. You may not agree with me, but at least to think about them will conduce to settle your minds on the question, and that will be a great good attained. By discussion we shall make an approach to the truth. I commend the subject to you, hoping that at least you will take into consideration what the legislature, not I alone, have laid before you as to the institution of Reformatory Schools throughout the length and breadth of the county. I believe them to be as necessary appendages to every good gaol as the doors, or the locks, or the treadmill,—and far more effectual.

*Note.*—The connexion of Reformatory Schools in each county with the gaols is of more importance than at first sight would appear. For unless it be so, there will be a great difficulty in carrying the late Act practically into effect; as it is framed at present, the sending the young criminal to the school is to be part of the sentence at the Assize, or at the hearing before the magistrate.

Now the criminal is to be sent to a school where the managers *are willing to receive him*, and the school is to be named in the sentence. How is a Judge to ascertain this during his stay (sometimes very short) at the Assize town?

It might be remedied by altering the Act and enabling the Judge to do this by subsequent order. But if the school were, so to speak, part of the gaol, the information would be always at hand, and no difficulty could arise.

# THE CHARGE DELIVERED AT THE LIVERPOOL WINTER ASSIZES,

DECEMBER, 1856.

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GENTLEMEN OF THE GRAND INQUEST,

I AM very glad to see so numerous an attendance, indeed the largest number that could perhaps attend the Court for the purpose of discharging the important duties which belong to your rank and station. And I am glad to find that you do not neglect that ; for, believe me, it is one of the greatest safety-valves for the English Constitution ; and as long as the gentlemen of this country discharge their duties to the public, so long will they have that legitimate and proper influence which they have hitherto held in this country ; and he is the best Conservative who continues to do his duty in his own station in life with the utmost activity and intelligence. \* \* \* [After alluding to particular cases.] The other cases are such as will have come before you in ordinary course, in your duties of magistrates ; and I am quite sure, knowing the county of Lancaster for a period of years—now amounting very closely to fifty—that you are perfectly well competent to discharge your duties in that respect without any instructions. Gentlemen, those cases having been disposed of, then you will find a good many—I don't know how many cases—in which people have been pardoned, so to speak, and come back into the world with what is called at present a ticket-of-leave, which certainly seems to me—in its effects, I mean,—an unwise proposition. They are let loose, you see, on society ; and the reason—the cause of it—is, that it is impossible to keep persons for so long a time as they were usually transported for before in this country. People get tried ; and a pardon is given, which is nothing but an incentive ; and then you have the result in a greater number of crimes committed by these people, who are not really reformed, but pretend to be so for the purpose of escaping punish-

ment. This arises from the medium of our having active, but I cannot help thinking, not very judicious philanthropists, who have been attempting to abolish the punishment of transportation altogether. Now, that transportation was subject to considerable evil, and required considerable reformation, was perfectly true; but it is, after all, the best punishment for the country which inflicts it and the criminal which receives it; for I believe it was perfectly well known, that the persons who recovered a good name, and lived a decent and respectable life, formed a large per centage of the total sent out; while of those who remain in this country, and who after a time are turned adrift, there is a very small, if not an infinitesimal per centage only. I recollect a few years ago visiting the Millbank Penitentiary in London, where they receive, and only receive, I believe, persons destined to transportation. I went over it with the late Rev. Mr. Whitmore Russell, a gentleman of considerable eminence, and who had paid great attention to criminal statistics. He showed me over the gaol, and I went over it, there being at the time 500, 600, or 700 prisoners therein; and he had been there doing his duty actively and energetically for fifteen or sixteen years. After I had seen the whole gaol, and observed the whole means by which penitence and reform were to be induced, I said to Mr. Whitmore Russell, 'Pray, now, you have been here for fifteen or sixteen years; how many people do you think you have reformed in those fifteen or sixteen years out of the seven hundred generally here?' Now, what think you was his answer? 'Possibly two—I am sure of one.' Now, that was the experience of a gentleman in the greatest penitentiary in London, of a class of persons subject to transportation, but almost incapable here of reformation; but if those persons were sent abroad—sent to the colonies, and turned out in the colonies after their period of transportation had elapsed—perhaps subjecting them to the system of ticket-of-leave, which, though very objectionable here, is not so there, I think that forty or fifty per cent. would be reformed, for such has been the case. I say, therefore, it is really a humane proceeding to transport persons with these means of redemption before them, rather than, by keeping them in this country, to cut off all chances of redemption. Surely that is more humane and wise. I do not doubt what answer you would give me. What is a man to do after you have subjected him to a long series of imprisonment in this country? You turn him out

with a ticket-of-leave. I will presume that he has behaved well in gaol, because persons who cannot behave ill are very apt to behave well. Then what are they to do? Would you take them into your employment? It would be an act of the greatest philanthropy, and at the hazard of your own comfort in your homes, and of your servants', who would not associate with that description of persons. They cannot obtain employment; what are they to do? You turn them among their old associates. They have the cleverness which belongs to that description of persons, and they place themselves at the head of some new gang. Then evil arises. The men are punished perhaps for a second time, and it ends probably in death. Now that is the fact. But turn them out in a colony, where the capital of the country requires an additional quantity of labour; the residents would take those persons more readily, and could avoid them with greater ease; they would be rid of their old associates in England, and would go into a new place, where they might distinguish themselves, as they are really capable of doing, by their talents and conduct; and they have often recovered themselves altogether, and become good men. Then why should we abolish, instead of reforming transportation? Is this system a better one than the other? It is given in exchange for a great good, though that great good is accompanied by some evil, no doubt; and the difficulty is to obtain a place where settlements may be made. A good deal of that has arisen from the real want of a good understanding and sense on the part of this country in former times. I believe no reason has been given which shows that we ought to transport the incorrigible criminals, and not try and separate them from one another previously in reformatory prisons, where they could obtain instruction. You cannot enter into the mind of prisoners: you cannot say this is an hypocritical man; but you can teach a man to read and write accounts. His hypocrisy cannot extend to that. You may teach him a new trade, or two new trades. I have seen at Pentonville people taught two trades. Well, then, if you send a man out capable of reading and writing accounts, and of following some trade in the colony to which you send him, you send him out a useful colonist, if you do not send him out a good colonist altogether; not that I would neglect the wholesome necessity of affording him religious teaching. I know that you may be deceived as to their mind, but you cannot be deceived as to these other points, because you

have the test open to you ; and they have the undoubted advantage of having learned a trade. All this can be done. All these may be taught at least outward decency of conduct, and may deserve to be classed among the corrigible criminals ; and those criminals, if you send them abroad—with the ticket-of-leave if you will, when you send them out—are good colonists, being well trained, and able to distinguish themselves by trade when they get out. You send them out as useful colonists, and with the chance of being good men ; and with God's blessing they may be delivered from the temptation to do evil. That is the best chance you can give them, for the purpose of removing them from the state in which they originally stood. No doubt that is a great chance. With respect to your incorrigibles, you ought to keep them at home. We have no right to inflict on the colonies people who are incapable of being reformed in any country at all. Your corrigible criminals being taught to be useful colonists, you have a right to send abroad ; and you will have no difficulty in getting colonies to receive them. The objection before was, that we accumulated them in such numbers in one unfortunate colony, that the colonists could not bear with them any longer : for they became part of the colonists themselves, and instead of being such men as the colonists could depend on as servants, they were the worst of characters. That was the reason why the colonists rebelled, so to speak. Well, then, I think there ought to be this distinction. I cannot help thinking, when you have reformed the criminal as much as possible in the gaol, and when you transport him, you should take care as much as possible to send his wife and family with him. It ought to be a burden on him, in a certain fixed amount, for carrying out with him his wife and children ; and within a limited period after arrival in the colony the expense of conveying them should be repaid by the criminal. If he is willing to pledge himself to that, you ought to assist him ; for it is one of the best ways of reclaiming a man, when you bring him back to what may be called his domestic duties and his domestic obligations. Gentlemen, I did not intend to occupy your time so long ; but I wish your minds to be employed upon the consideration of these subjects. They are much at heart with me : I hope they will be at heart with you ; and I am sure if I have the concurrence and the confidence in this matter of the kind and intelligent people of the country, among whom you figure so conspicuously, we shall have some chance of

coming to a right conclusion upon this matter. We wish to have a report on the subject, as far as it extends to adult criminals. The young criminals are to be reformed by reformatory schools, which are really doing great service, and I do not wish to make any alteration in that respect. I speak of the adults, for whom the establishment of the right system of transportation would be the greatest blessing which could be conferred upon them.

# THE ANSWERS OF MR. BARON ALDERSON

*Before Committee of House of Commons,*

APRIL 8th, 1847,

## ON PRISON DISCIPLINE.

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1. ARE any considerable number of boys of fifteen and under brought for trial before your Lordship on your circuits or in the capital?

2. Are many of these hardened offenders, or rather, tried for a first offence?

3. Are the punishments to which you subject them more frequently imprisonment and labour than transportation?

4. Have you generally understood that the treatment of those imprisoned has had the effect of reclaiming them, or are they frequently re-committed for new offences?

5. Have you in any cases dismissed the younger prisoners, on conviction, to the care of their parents, guardians, or masters, on their undertaking for their good management?

1. In answering these questions I think it desirable to class together the first four. I do not find that many boys of the age mentioned are brought for trial before me on the circuits, but more in the capital. Those who are so brought are, in general, offenders of what are supposed to be confirmed habits, rather than offenders for the first time. The punishment I impose is most generally that of transportation; my object being to give to the Government, as has been customary previously to their removal from this country, the power of applying the reformatory discipline of a penitentiary to such offenders. I do not think that imprisonment with hard labour in a prison, as prisons are now managed, is a judicious mode of punishment for juvenile offenders, as, I believe, that



without other efforts, it is not found by experience to produce any great or real reform, and that most generally it is followed by a re-committal. I believe, however, that the humanity which inflicts a slight punishment for the *first* offence, and for which so many people obtain a great reputation for tenderheartedness, is real inhumanity. The best chance for a reform is by severity of punishment for the first offence, for which reason I have very seldom discharged young offenders as suggested in the fifth question.

6. Does any amendment of the law, or any change in its execution, occur to you as adapted to the case of young offenders?

7. What is your opinion of the expediency of giving magistrates a power of summary conviction in such cases, and of dismissing them with or without whipping?

8. What is your opinion of giving magistrates or courts in general a power of dismissing, on recognizances for the good behaviour of some friend, with penalties to be enforced by process of law, and this either without or with punishment?

6. I think the administration of the law as to juvenile offenders requires much amendment. We want prisons appropriated to them, in which they should be subjected to a paternal but severe discipline, and that not for short but for long periods, subject, however, to remission on amendment. I do not think it would be in accordance with the spirit of our institutions to have such terms of imprisonment indefinite, as some have suggested, or dependent upon a system like a debtor and creditor account, in which the prisoner has no appeal if the account be unfairly kept. They should be definite, although long periods. In connexion with this I would desire to see a minimum punishment fixed by the Legislature, in order

that injudicious magistrates may not indulge their spurious humanity at the expense of the public and the criminal. There are institutions abroad, such as that near Hamburgh and the Colonie Agricole in France, and some also in England, which I should be glad to see adopted wholly or in part as models for juvenile reformatory prisons. As long, however, as juvenile offenders are mixed up in our gaols with adults, no effectual improvement can take place. I have known an instance in which a regular plan for a robbery, which took effect and was tried before me, was laid in one of what is called our best regulated gaols, and on the treadmill. The instrument there was a boy, and the principals were adult thieves. I may add that I am fully persuaded that a judicious plan of reform for juvenile offenders would be the most economical as well as the most merciful arrangement which could be made. The expenses now incurred by their repeated recommitments and trials greatly exceed the probable cost of an attempt at an effectual reformation, and to cure this class of offenders would be to cut off one most prolific source of adult crime.

I wish to add that it appears to me that no effectual reform in prison discipline can take

place so long as our county gaols remain on their present footing. What is wanted is, to have County Houses of Detention for untried prisoners, and District Penitentiaries for convicted prisoners ; and these last should be appropriated, one to adult males, another to adult females, another to boys, and a fourth to girls. Our present gaols may easily be adapted to this, by forming unions of several counties, and appropriating the different gaols to criminals from the whole union, according to the above classification. But this will require the intervention of the Legislature. Houses of Detention must be built in each assize town.

9. Does your Lordship regard the punishment of transportation as effectual to the repression of offences ?

9. I look upon transportation, by which I understand a penal removal of offenders to another country, as a proper punishment to be retained in the case of all criminals. It is a balance of evils, and the less evil is in retaining it.

10. Does your Lordship consider its benefits as sufficient to counterbalance the obvious evil of its inequality when applied to persons of different habits, character, and circumstances, especially station in life and property ?

10. There is no doubt that it operates very unequally on different ranks of society ; but this is not of much moment, as the class out of which criminals generally come is for the most part the same. There is a great advantage often in removing the leaders of a body of offenders, and so breaking it up. This advantage applies more frequently in the country than in the capital, where un-

11. Does your Lordship consider that it would be safe or expedient to dispense altogether with this punishment, or would it be more advisable

to retain it for certain offences?

12. If advisable to retain it for some offences, what are these? And do you conceive it could be retained so as to visit only such offenders as regard it with peculiar dread, leaving the discretion in the judge with that view?

13. Have you the means of stating what class of persons tried before you appeared chiefly to dread it, and what class to care less for it?

14. Do you conceive that the quickness with which the sentence is carried into effect peculiarly increases the operation of this punishment in deterring offenders?

15. Do you consider short periods of transportation—for example, seven years—as little to be recommended?

fortunately the class of leaders can never be got rid of effectually. The evil of transportation as it now exists seems to me to fall on the colonies: the mother country, even at present, has much benefit from it. Whether it be just to inflict such an evil on the colonies is quite a different question, and one on which I entertain grave doubts. I am clearly, however, of opinion that nothing can justify the mother country in sending out such criminals without a previous penitentiary system being adopted to make them less unfit to become useful members of a new society. I think if such a system were adopted, and those only sent out who appeared likely to behave well, much advantage would follow, as in a new country where labour is at a premium they would have a better chance of permanent amendment. As to the incorrigible, I think the mother country ought to keep them in imprisonment during the term of their transportation. There are some odious offences for which that punishment, even for life, and which should include separation, appears to me the only proper course to pursue. But these arrangements require an Act of Parliament to make them legal. I do not think the punishment of transportation should be appropriated to those classes who

dread it most : that would be to make punishment partake of the nature of revenge, which is utterly wrong. I have, however, no means of judging what class dreads it most. I do not think that more promptly carrying into effect transportation would be of any use. I do think that short periods, as seven years, are undesirable. In practice, I believe that such cases are seldom actually sent out of this kingdom.

16. Do you consider imprisonment a punishment which has terror for the bulk of offenders?

17. Does your Lordship conceive that separation or solitary confinement can be inflicted so as to heighten the effect of the punishment?

16. I do not think that mere imprisonment has much terror for offenders : to many who are brought to crime through distress it is, I believe, a great boon. Like transportation, it is very unequal in its operation. I think separation very desirable ; solitary imprisonment may with propriety, I think, be resorted to, but sparingly, and for short periods. I have generally applied it in cases of persons of education, where I have thought that reflection may produce amendment ; *e.g.* cases of manslaughter committed by such persons in a drunken state, where possibly less intemperate habits may be produced by compelled sober reflection on the fatal consequences of their intemperance. But separation, I think, should be the rule of all good gaols ; it is the only effective classification. I hold it to be the imperative duty of the State not to let a man go *worse* out

of gaol than he came in, if by any regulations they have the means of preventing it. It is also desirable—I do not know whether it is the duty of the State—to make all criminals *better*, if possible; but I think this object is to be held subservient to that of preventing crime—by the example of punishment; and on no other principle that I can perceive is it possible to defend capital punishments, which can hardly be said to have any tendency to make the individual criminals better, though I think they have a strong effect in repressing crime.

18. Do you conceive this effect to be produced if the separation be only continued for a short part of the sentence, as a month or two months?

18. It follows from what I have said, that my opinion is, that separation should in cases of adult criminals be continued during their whole imprisonment; but I would encourage as much of society of the good with such criminals as possible. The visits of kind persons should be allowed, subject of course to proper regulations. Employment and instruction of the latter, in company with each other, may properly be allowed.

19. What is your opinion of the silent system, or having prisoners to work under strict prohibitions of communicating with each other either by words or signs?

19. The silent system I believe to be impracticable, and very unadvisable if practicable. Strict prohibitions may be made, but can never be enforced.

20. Do you consider the plan of confinement and labour under the keeper's eye and in

20. I am not able to answer this at all, as I have no experience in the working of this;

separate cells, according to the panopticon plan of Mr. Bentham, expedient?

21. Do you approve a plan of making prisoners for grave offences, and hardened criminals, labour in public, as by working steam vessels or otherwise, closely confined, but seen by the public?

22. Does your Lordship consider that any reformation can be worked on offenders by a short imprisonment, as for three or even six months?

23. Does your Lordship think that imprisonment in the country of prisoners may be made so as to reform the offender, and yet to leave the dread of the punishment either entire, or at least sufficient for the purposes of deterring others. Particularly, what is your opinion of confining, but keeping to work in gardens or factories, under a close but kindly superintendence, and

but I distrust all systems requiring the continual inspection of a keeper as being in general totally impracticable.

21. I disapprove of this altogether. I believe such an exhibition would be very offensive to people in general, and would make the criminals objects of pity if the attention of the public were called to it; and if it were not, it would be of no use whatever. I do not by this, however, intend any disapprobation of the employment of such persons on public works, which I think very proper.

22. I believe crime to be a chronic disease, and not curable by a short process, if indeed curable at all. It follows that I disapprove of short periods of imprisonment as for this purpose useless. I adopt them because in the present state of our prisons I do not think reformation likely to follow from a long imprisonment there, but rather the reverse.

23. I have no great hope that any good effect would follow from adopting these suggestions. The more you adopt gentle means for reform the less dread you leave on the minds of the offenders and their friends. The latter even become desirous that their relations should be subjected to the discipline; and this actually, in the cases of children, operates very ill, by making

what effect in reforming the offender, as well as in lessening the terrors of the punishment, would such working, if not solitary, and if carried on in the open air, produce?

24. Do you think any system of imprisonment would be a sufficient substitute for transportation?

25. Do you think any punishment by transportation or by imprisonment would be a sufficient substitute for death in the cases still left capital?

26. Is the deterring effect of punishment generally, in your Lordship's opinion, very great, regard being had to the hopes of escape from apprehension, from prosecution, from conviction, from punishment, and regard being also had to the state of mind of the culprit when moved by temptation to commit the offence?

parents less regardful of their duties. But this is no reason for not making an attempt at reform.

24. I do not. My reason is principally that the criminal at the end of his sentence is turned out into a country where employment is difficult to be obtained even by the unconvicted, and where such a person is almost sure, by mere want, to be driven again to crime. In a new country this is otherwise.

25. I wish I could believe that the punishment of death could safely be dispensed with. It is at present practically confined to cases of murder. Whether all cases of murder require it, as, for instance, duelling and the like, is a doubt to me. That is an experiment which, I think, might safely be made. It is a bad thing to have verdicts continually given in the teeth of the law and the evidence.

26. I think it is not. The chances of escape are great, if a criminal were to calculate on them. I remember hearing it proved, when people were hanged for uttering one pound notes, that such notes sold currently for twelve shillings a-piece. The risk of death was then run for the possible gain of eight shillings on an expenditure of twelve shillings.



27. How far, in your Lordship's opinion, may we hope that good education, including therein infant training, as well as sound religious and moral instruction, will, by its preventive effect, lessen considerably the prevalence of crimes?

But in truth the other difficulty is also very great. The great body of criminals act rather upon impulse than calculation, and think but little of the probable punishment at the moment of temptation.

27. I have no difficulty in answering this. Our best hopes rest upon a good and religious course of education for the people,—an education which shall mainly be directed to the teaching them their duties to God and man, rather than merely giving them information. I do not undervalue the latter, I only think it of immeasurably less value than the former.

8th April, 1847.

E. H. ALDERSON.

## A LETTER TO A FRIEND.

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[*The following letter was in 1850 addressed to a friend, then about to leave the Church of England, and was printed originally at the suggestion of some persons who thought that it might, perhaps, be useful to others similarly situated.*]

MY DEAR —,

BEFORE I leave town even for a week, for I hope (D.V.) to be again here next Saturday, I must write a few lines to you. No one knows what a day or two may bring forth, and as it would give me the deepest sorrow to lose your services in our Church, and to see you following the unwise example set by others who ought to know better, of deserting the Church of their fathers in the hour of her trial, I must write to you, and put on record my own most deliberate opinion on the point. I should indeed deeply regret if I did not do my very best to keep you in what I feel sure is the plain path of duty.

When we last conversed on this matter you mentioned what seemed at the time to be one of your greatest stumbling blocks, the Royal Supremacy over the English Church. Now I am sure this is not a real or tenable objection.

If, indeed, the true doctrine allowed by the English Church were that the Queen had the spiritual supremacy over it,—had any power of declaring its spiritual doctrines, so as to bind its members in conscience to obey them,—or any power of administering any of the rites or ceremonies of the Church,—or of establishing any new rites or ceremonies, *proprio motu*, I could not, I own, advise you to remain a minister of such a Church, nor do I think that I should myself consent to remain in its communion even as a layman. But I am sure,—as sure as I can be of anything dependent on the examination of authorities and laws,—that the Queen neither has, nor claims, any such right, according to the laws which govern the Church of England. She has no spiritual supremacy at all; except this, that no *new law* (not even one applicable to discipline or doctrine) can be declared by the Church in Convocation assembled with-

out her assent. I say, advisedly, 'declared;' for the whole Church catholic, you will remember, cannot '*enact*' any new matter of faith and doctrine. It can only, at the utmost, declare that which it holds to be the revealed will of God. It has no legislative authority to make any new revelation. But to declarations, more aptly expressing in words what was before revealed, which may be made no doubt by the Church catholic or any branch of it, and therefore by the Church of England, the assent of the Queen, who in this represents the whole body of the laity of England, is requisite. Even in old times the decrees of Councils did not bind till in like manner these were accepted by the whole body of the Catholic Church. This acceptance on the part of the general body we in England give to the decrees of our national Church by the Crown, our representative. There is nothing wrong in this.

When, however, we speak of ecclesiastical supremacy (too often by half-informed persons both of the clergy and laity confounded, I am sorry to say, with spiritual supremacy), the Queen's authority is not of this merely negative description. But then even this ecclesiastical supremacy is limited like all other powers in this free country. It is only the power of regulating the Church, as its *executive* head, according to the laws of the Church already made, of determining disputes as to their construction by judges ecclesiastical, of appointing those judges, and of enforcing by the civil power their judgments. In fact, the Queen has here the same authority, and no more, in matters ecclesiastical, defined and limited by the ecclesiastical law, as she has in matters temporal defined and limited by the municipal law. It is true, she may appoint bad ecclesiastical judges, as she may appoint bad civil judges. But what power can be devised amongst fallible men that shall never make any such mistakes?

Don't embarrass yourself, I pray you, with that transparent fallacy that a power of ultimate decision as to questions relating to the interpretation of law is a legislative power. Even where the legislature is, as unfortunately that of the Church of England is, in abeyance, this is not true. It is indeed a good reason for doing your best to restore to their activity those true rights which belong to the Church. I beseech you never to forget that what we are called on to abide by, in deciding as to our remaining in the English Church, is its true theory. The actual practice of all Churches is, I fear, very imperfect, and requires improvement. But a Church

defective in its true theory can never, even if fully carried out, be good ; and by such a Church I do not say that it is your duty to abide, and certainly not if its defects be vital. But there is no real defect at all,—certainly no vital one, in the true theory of a Church even if it does hold, as the English Church does, the supremacy, such as I have described it, to be in the Crown. The laws are to be made by the Church and assented to by the Crown. This is the spiritual part of its supremacy. Its ecclesiastical supremacy consists in administering and executing the laws thus made. What reasonable man can fairly object to this ?

There is another point also to which, in considering this subject, it may be well to advert. All executive governments, where by the civil law certain temporal rights and privileges depend on a given status, denoted by the holding of certain opinions, must of necessity have the power, in deciding, as by their judges they do, upon these subjects, of incidentally also determining on the opinions held by him who claims the privilege in virtue of the opinions. But no one ought to mistake that for a power of binding the Church itself to hold such opinions. If a right in England depends on a law of France, we examine whether the man claiming it falls within the operation of the French law, and incidentally we determine what the French law is. But who believes that in doing so our decision in any respect affects the law of France ? So in deciding on a question of ecclesiastical law we shall examine incidentally and determine what it is, so as to decide the particular case, leaving the real ecclesiastical law, like that of France, unaffected by it in future. In all this also what is there objectionable ? The truth is that if we spoke accurately, we ought to say that in neither case did we determine, but in both only ascertained what the foreign law was.

I come now to a second of your difficulties, viz, as to the manner in which you are to ascertain the true construction of those declarations of doctrine which in the laws made by the legislature of the Church of England have been already embodied in her articles, her formularies, and canons. I shall speak here, being a layman, with less authority. But the true rules of construction are the same both in divinity and law. They are based on good sense, and therefore have been adopted by those whose perpetual duty it is to apply them. You will hear from me no recommendation to take words in a non-natural sense : I utterly abhor and despise such a practice. Our rule

is this ;—take the plain literal grammatical sense of the words as they were used by those who propounded the law, unless such a sense leads to some obvious contradiction, in the law so construed, with itself, or to some patent absurdity. If there be a contradiction or absurdity such as must lead a rational man to say that those who enacted the law could not possibly have meant to use the words in their literal sense, then you may modify them, but only so far as just to get rid of the contradiction or absurdity. Let me apply this principle of construction. It may be that the articles literally construed contradict the liturgy literally construed. But suppose that to take one or other in a modified sense will easily reconcile both. That modified sense, then, should in construction be adopted. So again plain words in a law give the key to the construction of ambiguous words ; and therefore that alternative construction of the ambiguous words which agrees, not that which disagrees with the plain words, must be taken.

Acting on these principles of construction, let me, then, intreat you to take our articles and liturgy into calm consideration : read them for yourself, taking our best ecclesiastical writers as helps, but not as conclusive authorities. Judge then. Do you find there regeneration in baptism distinctly stated ? Do you find the real spiritual presence of Christ in the Eucharist. Do you find the other vital doctrines which you believe scriptural and true, laid distinctly and plainly down as things to be believed. If you do, trouble not yourself that — or — do not also find them there. Be very sorry that they are such ill advised and unworthy members of the English Church. Be surprised, if you will, that they are able, holding those opinions, to remain ministers of the Church. But leave them to settle those questions for themselves, and whatever you do, do not be so mad as to expect that until the second coming of our Lord there ever will be a Church in which all its members entertain precisely similar opinions as to the construction of all and every one of its laws. Be content in the meanwhile to remain a member of a Church which really, in your individual judgment, by its true members, holds the faith as it is in Jesus, and which, if fully carried out, would satisfy your own best and fondest aspirations. Try also to carry it out thoroughly. But do this in the wisest and most effectual way. Do not sacrifice, by too great haste, real progress. Do not obstruct the success of vital faith by such an over-attention to mere ceremonials as will deprive you of half your usefulness. Oh ! if this had been

timely considered by our friend \* \* \* \* or if, instead of deserting the Church in her struggles against the prevalent Erastianism of the age, \* \* \* \* and others had remained with us to fight the battle of the truth—against Rome, on the one hand, and Germany and Geneva on the other—in what a different position would the Church of England have been at this day!

Nevertheless, let us not be weary in well-doing. We have lost some of those whom we thought our best soldiers; but we have a good cause, and God will be with us, and give us success if we persevere faithfully.

And why should you desert us now? Why seek in Rome's communion the rest which it seems you cannot persuade yourself to find with us? Do you believe that you see Rome now as she really is? Her game at present is to soften down all her asperities—to spiritualize away all that would stagger you in her Tridentine tenets, and to make you believe that after all you never did really differ much with her in essentials. If you think this, try it by this test. Put down, in plain, unambiguous words, what you do hold as to the meaning of those very Tridentine tenets, and see if you and the Roman Church are then practically agreed. I feel assured of the result, if you will fairly make the experiment. The Roman Church will never allow your interpretations of her decrees to be true.

After all, however, the main controversy between us is, as to the claim of spiritual supremacy of Rome over the whole Church of Christ. Now this, so far as argument can settle it, seems to me, I must say, a settled point. When Rome shall answer (which she never has, and never will, I believe) our great divines on this point, it will be time enough to reconsider it. They appeal to reason, common sense, and history. They rely on the undoubted testimony of the whole early Church, including that of the Roman See itself. If this will not satisfy you, I do not affect to say that I can add anything to it. Can you set against all this the theory of new developments of Christianity? If so, I am afraid you must have 'tribus anticyris caput insanabile,' and that nothing but a special revelation from God can deliver you from your error.

Do not mistake me. We all, I believe, render willing testimony to the great authority and high deservings of the Roman Church in times past. Let Rome even claim the Primacy, and, for ought that I care, possess it. *Inter pares prima*. I will allow her to be so; though I doubt whether she has even

this of right. But this I believe to be true of her—that when she claimed the least, she deserved the most ; and that it is in consequence of this very exercise of a supposed supremacy that, wanting the salutary checks of the Catholic Church, as it really ought to be constituted, she has, like all other fallible institutions, fallen into grave errors. Let her, then, abandon her supremacy, and she will recover her own purity, and the Church of Christ its unity. And then (God grant it !) will soon follow the second advent of our Lord in glory to His united Church, and a converted world.

In the meantime, your duty seems to me to be plain. You ought not to desert us, as others have done. You should not hand over your congregation to God knows whom, who may put in hazard the souls of those who, by your better ministrations, might have remained true members of the pure branch of the Catholic Church in England. Why are you to desert it ? It is the Church of your fathers—the Church of your youth. It was the Church of your maturer examination and deliberate adoption when you were ordained one of its ministers.

This is my last and solemn charge to you. If you neglect my advice, and disregard my authority, such as it is, the serious responsibility will rest with you—*liberavi animam meam*.

Ever affectionately yours,

E. H. ALDERSON.

## A LETTER TO THE BISHOP OF EXETER.

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MY DEAR LORD,

IN the course of our conversation yesterday, you did me the honour of saying that I had presented the decision\* of the Judicial Committee of the Privy Council in a somewhat new point of view to you, and you wished that I would put the same down in writing for your more mature consideration. I do so now—not without the hope that my view, if it be correct, may tend to quiet the fears of some of our more anxious friends, by showing them what the effect of that judgment really is, and how little, when properly understood, it affects the future prospects of the Church. But first I would wish to point out that a decision is not properly to be treated as a law. It differs in this most material circumstance: that a law governs all future decisions, whether the judges appointed to decide agree with the law or not. But a decision is questionable by them, and only binds them if they agree with it. I grant that a long course of uniform decisions constantly made, and often recurring, would probably be so nearly equivalent as to be treated practically as a law. But we are speaking of one decision, and the effect of it. We have now a practical illustration of that in a case in which you are interested. The Queen's Bench have refused you a rule for a prohibition, and you are questioning that, by renewing the same application to the Common Pleas. If they agree with the Queen's Bench on the merits of the argument, they will decide as the Queen's Bench have done. If they do not agree, they will without scruple act contrary to that decision. If the decision of the Queen's Bench were a law, they could not do this. It may be said, no doubt, that these are courts of co-ordinate jurisdiction, and that the Judicial Committee is the Court of ultimate appeal. But this really makes no difference. It is clear that any future Judicial Committee

\* In the Gorham Case.



could overrule this decision ; and so might even any inferior court, subject, however, to the consequences of an ultimate appeal against their decision, to which appeal the Judicial Committee itself is not liable. In truth, where the House of Lords makes, in a civil suit, a decision contrary to the rules of law, the courts of law very soon, although they do not expressly overrule it, make it practically inoperative by distinguishing every case which comes before them from it, however minute such distinctions may be ; whilst if the decision be right and well-founded, they carry it into effect fully and with all its reasonable consequences as corollaries from it. To those therefore, and there are many, who think that this decision of the Judicial Committee is wrong, I should say, 'Lay before the public the grounds of your difference of opinion openly, in the shape of well-considered arguments ; and in the next case of a similar nature which arises, go with confidence in those arguments to the next Judicial Committee, and you will probably succeed, even if the same judges sit there, and more certainly if their successors do so, in overruling this erroneous decision. In the meanwhile, you will say, there is the evil of a clerk of heretical opinions being admitted into the Church ; I admit the evil ; but suppose it was one who had been acquitted, improperly perhaps in your opinion, of any other offence by competent authority, would it be fair to say, because the tribunal had mistakenly acquitted him, that it was decided that the Church might properly be served by a criminal, and therefore that you must leave it ? Certainly not. This clerk is in a similar category. In your opinion he is a heretic. But it has been adjudged otherwise by a competent tribunal, and you must acquiesce, in this instance, in that judgment which you deem erroneous.' This, my dear Lord, is the advice I should venture to give under these circumstances ; and I hope that in so doing I should have your concurrence.

But there is another point of view also, and I think a very material one, in which I wish to present the decision to you. And it was this of which we were speaking yesterday. Supposing the decision to be of greater weight in governing future cases than for the above reasons I think it is, what is the decision itself ? Now, it seems to me quite clear that the governing part of every decision, as to future cases, is the rule of law laid down therein. If the judges who decide make a blunder as to the facts of the particular case, and upon that erroneous view decide it, laying down the law, correctly supposing those

facts to be true, the decision may be a wrong one in the individual case, but the law laid down will be right, and may well govern in future.

To illustrate my proposition, let me suppose that the Judicial Committee in stating what they, from the facts before them, considered to be Mr. Gorham's opinions, had stated that they considered him as holding 'that all children duly baptized in the mode prescribed by our Liturgy were thereby regenerate'—and had proceeded to lay down as a rule that a clergyman holding that opinion could not justly be refused institution by your Lordship. Who could have differed from them as to the rule—however much we might have been surprised as to their opinion on the facts? The rule would be that which would govern future cases. It would have been determined that clergymen holding *the specified opinions* must be instituted—and no injury could arise to the Church from such a decision. Our complaint would be that Mr. Gorham did not hold these opinions in fact. This wrong would only apply to his individual case.

Let me now call your attention to what the Judicial Committee have done. They begin by stating, as I have suggested, Mr. Gorham's opinions as they collect them from the documents laid before them. They are these :—

1. That Baptism is a Sacrament generally necessary to salvation ; but that the grace of regeneration does not so necessarily accompany the act of Baptism that regeneration *invariably* takes place in Baptism.

2. That the grace may be granted before, in, or after Baptism.

3. That Baptism is an effectual sign of grace by which God works invisibly in us, but only in such as *worthily* receive it ; in them *alone* it has a wholesome effect : and that without reference to the qualification of the recipient it is not in itself an effectual sign of grace.

4. That infants baptized and dying before actual sin are certainly saved.

5. But that in *no case* is regeneration in Baptism unconditional.

Upon these opinions, and these alone, the Court proceeds to give judgment,—and they hold that your Lordship was not justified in refusing institution to a Clerk holding these opinions. Even if the decision was in the nature of a law, which it is not, it is at the most a law framed in these specific terms. Now, taking this to be so, I am somewhat at a loss to perceive which

of these five propositions taken to the letter necessarily and clearly militates against any known rule or doctrine of the Church of England.

Does the first? For I have divided the statement into parts for greater convenience. I apprehend not. For that adults being baptized and not sincerely believing what they profess to believe are not regenerate in Baptism, is a proposition, I believe, not disputed by many. If this be true, regeneration does not so necessarily accompany the act of Baptism, that regeneration *invariably* (that is to say, in all cases) takes place in Baptism. As expressed, therefore, the first proposition is not necessarily inconsistent with true doctrine. Its real fault is its ambiguity. It is open, as lawyers would say, to a special demurrer; and if Mr. Gorham really so expressed himself, I should think that in him an adroit special pleader had been lost to the law.

I proceed to the second clause. That the grace may be granted before, in, or after Baptism. I doubt whether this be open to exception. I speak with diffidence, but I think there are passages of Holy Writ in which it at least seems probable that grace was granted before, perhaps being confirmed in, Baptism. St. Paul is one instance of it. The assembly at the house of Cornelius another. And who shall say that a converted and believing heathen man, a sincere candidate for Baptism, may not have grace before Baptism? Grace in Baptism does not seem disputable. Grace after Baptism is surely possible. Suppose the case of an adult duly baptized with water, and in the name of the Father, and the Son, and the Holy Spirit, who being not completely a believer, becomes a complete and sincere Christian believer afterwards. It is at least doubtful, and that would be enough, whether a new baptism would be lawful in such a case. But I conceive it is, as to this, sufficient to say that the Church in her Articles and Liturgy has not clearly pronounced such a belief to be erroneous.

The third clause, which confines the grace of regeneration in Baptism to those who *worthily* receive it, and to them *alone*, is, I conceive, true as far as it goes. It is defective in not adding that our Church holds that all infants are worthy recipients. But, as it stands, it is not inconsistent with such an opinion.

The fourth clause is in the very words of the Liturgy.

The fifth, you will observe, is very carefully worded. It merely asserts, 'that in no case is regeneration in Baptism unconditional.' Nor does the Church, as I believe, say otherwise.

There is always the condition of being a worthy recipient. If Mr. Gorham thinks all infants are so, *and he nowhere in this statement of his opinions says the contrary*, I do not think the Church will disagree with him, for it may well be holden that a condition of worthiness is both required and fulfilled in infant Baptism. And in adult Baptism the Church does hold that this condition is not only required, but that it may or may not be fulfilled at the time of Baptism. It may also be that this paragraph means that the condition of using the element of water and the words of our Lord is required. And if so, I conceive we do not differ with him in that respect.

I have now gone through the whole. I hope I may satisfy you as I have satisfied myself, that if this statement of Mr. Gorham's opinions be a true, full, and complete statement of them, and he holds nothing more adverse to the Church than these exact words necessarily import, you cannot with justice impeach or complain of the decision in his favour. If such an opinion had come before you as Bishop, in his examination, I do not for a moment suppose that you would have been satisfied with it. What in it is ambiguous you would have required to be made more precise. What in it is defective you would have caused to be supplied. But this the Court could not do. They are limited by the actual examination and the opinions to be extracted from it. And they cannot refuse Mr. Gorham's prayer for redress if the case be not made out *affirmatively* against him.

The law, then, laid down by the Judicial Committee is, that a Clerk holding these specified opinions, and no more, should have been instituted if in other respects unobjectionable. This law, if it be a law, is that which affects future cases. If, therefore, a Clerk were avowedly to hold now, *totidem verbis*, that *all Infants are not worthy recipients of Baptism, and are not regenerate by Baptism*, he will find it impossible, in the letter of this decision, to obtain protection for that opinion. For it is not mentioned in the terms of the decision at all.

Do I, then, say that I think the decision in this case is right? Far from it. I own that to my mind it is altogether erroneous. But the error consists in this, that the judges, in their supposed abstract of Mr. Gorham's opinions, have not stated the facts correctly. It seems to me that he holds other opinions not stated in this abstract, which ought to have produced an opposite decision. But this is like the case of a jury mistaking, or falsely finding the facts of a case. That makes no rule for the

government of future cases—though it does a particular and irremediable injustice in the case in which it happens.

I conclude, therefore, 1st. That this is but a decision, and no law. That it governs future cases only if the judges who shall be called to determine them agree with the reasons given in this case. That if on argument and full consideration these reasons are insufficient, this decision may—ought to be—and will be—overlooked. Therefore, it does not govern or affect the Church, as a law made in Convocation would do.

2nd. I conclude that even if it were a law, it must be taken in the exact terms used by the Court; and that those terms, construed literally, are not necessarily inconsistent with sound doctrine.

3rd. That the real error in this case is one of fact, viz., that the judges have misstated Mr. Gorham's opinions; or, which is the same thing, have not fully stated all the erroneous opinions which, from the documents submitted to them, he really holds; and that this error, lamentable as it is, does not go beyond a wrong decision in the individual case, and cannot be cited as a precedent, except for the purpose of avoiding such mistakes in future.

Now, if this be so, why should this decision so much disturb the minds of zealous and sincere men, who in all other respects, and up to this time, have remained in our communion amongst the most valued of its members? After turning this matter much and often in my thoughts, I must deliberately say that in my humble judgment it should have no such effect. It may be that the prevalence of erroneous views, brought now under our notice, should cause a greater care to set forth often and more emphatically the truth in this matter. In all probability this will succeed. For the truth needs only to be shown to be successful. Or it may be that your Lordship and your brethren will do well to assist the inferior clergy, and us, the laity of your flocks, with some assurance and advice on this important subject in dispute, and to declare authoritatively that our Church does not hold doubtful opinions on either of the two great Sacraments, for surely, if she did, she would not be a true branch of the Catholic Church at all. I trust we shall not look in vain to our Bishops for an answer to this question.

But in any event, I see no ground for leaving the Church in such an emergency. We ought rather, I think, to cling more closely to her in this struggle against error and latitudinarian opinions.

With many apologies for giving you the trouble of reading this long letter, and with the request that you will favour me with your opinion as to the subject of it,

Believe me, my dear Lord,

Very faithfully yours,

E. H. ALDERSON.

The Lord Bishop of Exeter.

P.S.—I am aware that it is a received, and probably a correct opinion, that Baptism, if rightly administered, is to all persons effectual regeneration, either for good or for ill. Perhaps it was for this reason that the very same declaration, ‘Seeing now that these persons are regenerate,’ is retained in the service for adults, as is found in that for infants, although the regeneration for good is in adults confined to the worthy receivers of the rite. And there is a further confirmation of it in the peculiar wording of the Article of Baptism, which speaks of them who *rightly* receive it; whereas, the article as to the Eucharist speaks of those who (not only) rightly (but) worthily and with faith receive it. If this be so, it would seem to exclude worthiness and faith from being necessary ingredients in the effectual regeneration to baptism, though necessary in the effectual regeneration to eternal life.

But this really would not vary the above argument, and therefore I only advert to it here, that I may not seem to have undesignedly omitted it. For it is quite obvious that both your Lordship in your examination, Mr. Gorham in his answers, and the Judicial Committee in their judgment, refer only to Regeneration to Eternal Life—using it always in the good sense, as distinguished from the effectual regeneration above referred to. And therefore, granting the above to be the true and correct view of the doctrine, it will leave the present argument precisely of the same, if of any, value as before.

## A SECOND LETTER TO THE BISHOP OF EXETER.

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MY DEAR LORD,

I TRUST I can now satisfy you that we have both been labouring under a great mistake for some time, and that after all no ecclesiastical rule can properly be said to have been violated by the judgment of the Privy Council in the Gorham case, but that it is quite right that the Crown should have the jurisdiction in such a case which they have actually exercised.

The question, then, is this, What is the real nature of the suit called *Duplex Querela*? For a suit it is, no doubt (though I had at one time thought otherwise), and one, too, in the Archbishop's Court. You will find from our older authorities that the Archbishops of Canterbury in former times used to claim the right of interfering in their comprovincial dioceses *per simplicem querelam*, *i.e.*, as I believe, of acting, so to speak, in all cases as joint ordinary with each Bishop throughout their province. This claim of jurisdiction is specially mentioned and discussed in Gibson's *Codex*. This right, however, was disputed and given up, and the jurisdiction was ultimately confined to those cases alone in which, after an application to the Comprovincial Bishop, he had heard the Clerk and decided wrongly against him. This right the injured Clerk pursued by the process called the *Duplex Querela*, a process there is some reason to believe peculiar to the province of Canterbury, and arising from the legatine jurisdiction of that see, as it is well known that the Archbishops of Canterbury anciently claimed to be *legati nati* of the Pope.\* But whether this be so or not, it is clear that either on this ground or as metropolitans, they have always exercised this jurisdiction within their province.

\* This probably explains the saving of the jurisdiction of the Church of Canterbury in the 25th Henry VIII.

I cannot find any instance of the Archbishop of York doing this, which inclines me to this hypothesis of the legatine jurisdiction. If this be the nature of the Duplex Querela, it is manifest that it consists really of two parts wholly separate and distinct from each other; one, a suit in the Archbishop's Court for the purpose of determining whether the Archbishop has in the particular case this jurisdiction; and this depends on the question whether the Bishop has committed an error; and secondly, a claim by the Clerk, that if the Archbishop has jurisdiction, he shall act or proceed to institute the Clerk as upon a presentation made to himself in his own diocese.

Now, the suit, and of course the Appeal to the Privy Council, is, properly speaking, confined to the first branch alone. If the Archbishop decides against the Bishop, the latter then appeals to the Crown to prevent the Archbishop from improperly infringing on his diocesan rights; and if the Crown, upon argument before the Delegates or Privy Council, think the Bishop right, they will by their judgment overrule the Archbishop, and prohibit him thereby from proceeding. On the contrary, if they think the Bishop wrong, they will leave the Archbishop to proceed to the second branch, the consequence of his decision, and will direct him to act at his discretion in instituting the Clerk, if on examination he finds him fit.

Or suppose the Archbishop, agreeing with the Bishop, has dismissed the Clerk's suit in his Court. The Clerk then appeals to the Crown, and the Privy Council hear it. If they think the Bishop originally wrong in his refusal, and therefore that the Archbishop ought to have acted on his jurisdiction, they order him to proceed so to do, and he then proceeds, as in duty bound, to act as he would have done if the living were in the Diocese of Canterbury.

The Privy Council do not order the Archbishop to institute as a mere ministerial act; they have no jurisdiction to do that, but they have a jurisdiction to compel him to exercise his Archiepiscopal discretion in that case.

Now, the very nature and course of the proceedings shows that this is so. The judgment is, that '*the suit be remitted to the Archbishop that right may be done.*' This cannot mean an order to institute *at all events*. The presentation itself is not officially before the Privy Council at all, and consequently they do not judicially know of its existence. The meaning of the judgment must therefore be, that if presented (and why not if fit also?) he be instituted. And what does the Archbishop in his Court proceed to do upon this? The first process is to



summon the Bishop to bring in the presentation, which being THEN and not till then, before the Archbishop, he proceeds to exercise his discretion, as to institution, regularly. Now, if this be not exercised by examination of the Clerk, these absurdities would follow. 1st : No provision would be made for heresy or crime committed *between the examination by the Bishop and the institution by the Archbishop*, and yet this interval may be one of many months or years. It would be obviously absurd to institute upon an *antecedent* supposed fitness, instead of a fitness properly ascertained *at the time of institution*. The solemn words of institution, 'accipe curam meam et tuam,' would forbid such a conclusion. Besides, if the sufficiency of the examination before the Bishop is to be the sole criterion, in what way is an examination *merely frivolous, one which neither shows affirmatively nor negatives heresy or unfitness to be dealt with?* Such an examination would be indeed a perfectly sufficient warrant for the exercise of the Archbishop's jurisdiction, but would be manifestly insufficient for his institution of the Clerk. Indeed, it might even open a door to fraud. For a Bishop knowing a man presented to him was a heretic or ignorant person, and being desirous to favour him, though not willing himself to take the odium of institution, might reject him on some frivolous or insufficient pretence, and so deprive the Archbishop of all discretion in the matter, and throw on him the disgrace of instituting a manifestly insufficient Clerk.

Again, another absurdity follows, if the law be not as above suggested. There is no authority for saying, that where the Archbishop on a presentation really to himself rejects the Clerk, the latter has any remedy by duplex querela at all. It seems probable, therefore, that here the Archbishop's decision is final ; but, if the judgment of the Privy Council be a judgment ordering institution, it would follow that though the judgment of the Archbishop alone was final, his judgment, when confirming that of the Bishop, was not so. But, on the other hand, if the judgment of the Privy Council really be only that the Archbishop shall exercise his jurisdiction, the two cases become parts of one uniform and harmonious system. It is some confirmation of these views also, that in the case of a Quare Impedit, when the fitness of a Clerk is alone the question before the court of law, which it sometimes is, it is pretty clearly laid down that the fitness in issue before the court, is not the fitness at the time of the refusal by the Bishop, but the fitness at the time of the certificate of the Archbishop. It is this which is

to decide the case. And this only takes place *if the clerk be living*, which circumstance clearly points to the conclusion that the Archbishop is to examine him personally and de novo, that he may be enabled to make that certificate.

I, therefore, for all these reasons, have come to the conclusion that, after all, the only effect of the judgment of the Privy Council was to send Mr. Gorham before the Archbishop of Canterbury, in order that he might judge, after examining him at his discretion, whether he, the Archbishop, thought him a fit person to be instituted to the living of Bramford Speke, and in that event only to institute him as on a presentation to himself. Now, if this be so, what ecclesiastical rule is violated by this proceeding? Ought not the Crown, as governing all estates of men, ecclesiastical or civil, within the realm, to decide on the one hand, whether an Archbishop infringes the diocesan rights of a Bishop; or on the other hand, whether he refuses to give redress to a Clerk unjustly oppressed by the Bishop? Ought not the Crown to prohibit the Archbishop from proceeding in the one case, and to order him to act in the other; in the latter case, however, not directing him what to do when he exercises this jurisdiction?

Thus, if the Chancellor dismisses a bill, and on appeal the House of Lords differ from him, they order him to proceed, but they do not direct him to decide in favour of the plaintiff. Here the Privy Council order the Archbishop to proceed; but they do not direct him to institute Mr. Gorham.

This is my view of the case. If I am right, however, I may as well add, that the most improper person to have been present at the argument was his Grace of Canterbury, either as assessor or judge. For it was his duty to take no part till the question of his jurisdiction was first settled.

Before I conclude this letter, I will add a few words on the Royal Supremacy, a subject much talked of in these days, and often as it seems to me by persons who do not well understand its real import. Properly understood, there is nothing in it which need give any alarm to the most sensitive Churchman.

The King is with us the Supreme Head of the Church. But in what sense, and what are the limits of this his supremacy? He is Supreme Head of the State also; and the Oath of Supremacy puts both on the same footing.

Now, to understand this properly, it will be well to divide this supremacy both in Church and State into its two main branches—executive and legislative. Unless we do this, we shall fall into much error.

But before we discuss this question, let me call your attention to the important negative words of the Article and Oath of Supremacy, which in fact were the main reasons for framing it, and constitute its most important provision. We thereby deny all supremacy, whether spiritual, ecclesiastical, or temporal, to any external power. In this all true members of the Church of England agree without any restriction whatever. I regret, however, to be obliged to add that some of our *soi-disant* members seem disposed (as extremes are always found to meet), to attribute an absolute Supremacy to the Crown—as absolute in fact as that claimed by the Bishop of Rome over his subjects—and if established, as fatally leading to the corruption of our beloved Church, as it has already done to the corruption of the Church of Rome. If any one person is to exercise absolute power in the Church of Christ, it matters not much whether it be the King or the Pope. Indeed, if antiquity is to decide it, the latter would have the better claim. But both are contrary, as I believe, to primitive antiquity. Let us proceed, then, to examine in detail the true executive and legislative supremacy of the Crown in this country.

The executive supremacy of the King over the Church gives him full power, as our Article expresses it, of ‘restraining with the civil sword all wrong doers,’ but no power of interfering in the ministrations of the Church. It is well put thus by the 25th of Henry VIII., c. 21, s. 19: ‘Provided always, That this Act, nor any thing or things therein contained, shall be hereafter interpreted or expounded, that your Grace, your nobles and subjects, intend by the same,’ (i. e., by denying the Pope’s power in England), ‘to decline or vary from the congregation of Christ’s Church in any things concerning the very Articles of the Catholic faith of Christendom, or in any other things declared by Holy Scripture and the Word of God, necessary for your and their salvations, but only to make an ordinance by policies necessary and convenient to repress vice, and for good conservation of this realm in peace, unity, and tranquillity, from ravin and spoil, insuing much the old ancient customs of this realm in that behalf; not minding to seek for any relief, succours, or remedies, for any worldly things and human laws, in any cause of necessity, but within this realm at the hands of your highness, your heirs and successors, kings of this realm, which have and ought to have an imperial power and authority in the same, and not obliged in any worldly causes to any other superior.’ These are plain and true words. No doubt King

Henry and his successors claimed and exercised the complete executive power and judicial superintendence of the Church : in fact, all executive power, with one exception, mentioned in the Article on the supremacy, and which in a lively manner shows the limits. The ministry of God's Word and the Sacraments is a part of the executive duties of the Church. These the Article expressly excepts, showing that even in executive matters the King does not interfere where they are purely spiritual.

He claims to appoint the Bishops ; but this is, I conceive, according to the truth of the law, subject to examination as to fitness in some specific points, and confirmation by the Church in the Archbishop's Court. If the Archbishop or the guardian of the spiritualities refused this confirmation, or refused to consecrate, or do any other ecclesiastical act, wilfully and unjustly toward the Bishop elect or towards any other persons entitled to have these ecclesiastical acts performed, the king, through his chancellor, was by a commission of delegates to examine judicially into the question of right ; and if after deciding the question against the Archbishop, and enjoining him to do the act, that prelate still refused to obey, the King punished him for his disobedience, but did not himself proceed to do the act. He then deputed the power of doing it to two other spiritual prelates, to be specially named for the purpose. This jurisdiction is even now occasionally exercised when upon the accidental incapacity of the Archbishop a commission is granted by the Crown to Bishops to consecrate a Bishop elect here, or as it may be now, in the colonies. For the act being spiritual, seems to have been thought *ultra vires* of the King himself. So little did the King ever dream of exercising personally or by lay judges what some ill-informed people have since ascribed to him, pontifical or spiritual power.

The executive ecclesiastical power, however, he did claim and did exercise. But this also he did only in the same way as he proceeds in civil matters. He acted not personally, but by deputed judges. He determines ecclesiastical matters by ecclesiastical judges, as he does civil matters by civil judges. In both it is done by the law, a rule by which the King as well as the Church is bound. If it be a case of heresy, these judges are to ascertain what the law of the Church calls heresy, and how it is to be punished. If they find the law, they apply it to the facts. But they do not make or pretend to alter the law : they have no power to do this. If they made as well as administered

it, no man would be safe for a moment. To live subject to that would be to live under a pure despotism.

The only ground of complaint here is, if any, that unskilful and unlearned judges may be appointed. That is, if well founded, to be cured by appointing better. If laymen, from their course of reading and study, or for any other reason, are unfit to be judges, then ecclesiastics should be selected for this purpose, as in former times they were, there being many instances in the books of Bishops sitting as delegates on ecclesiastical appeals. But the theory of the law is right, as it stands, as to the executive supremacy of the King.

Next we come to his legislative supremacy, which is not expressly touched at all by the Oath of Supremacy or the article on that subject. But it is understood, no doubt, in both. Here the supremacy is simply of order and rank, with one exception only (common to both civil and ecclesiastical supremacy), the power of the initiative as well as the veto. No law can be discussed in convocation at all without the initiative of the Crown first granted. This prerogative exists, but is not universal, in civil matters. In them it is confined to particular subjects when brought before the parliament. The difference, however, is one of degree and not of principle. Subject to this exception the King has the very same and no greater power in convocation than in parliament. He has no power of making or changing laws in either, but he has the power in both of preventing by his veto any change from being made. By his coronation oath he binds himself expressly to observe this and all other privileges of the Church faithfully, and it would be a clear breach of that oath to assent in parliament to a law altering the doctrines or ritual of the Church, unless such alteration had been previously submitted to convocation for their assent, or the law itself made expressly subject to their subsequent approbation. Both parliament and convocation must unite as they did when the Act of Uniformity was passed, to make according to our constitution in Church and State such a law.

It is probable, indeed, that the discipline of the Church also falls within the same rule; and it may be well doubted whether in propriety the Crown or the Bishops should ever assent to such bills unless subject to the same assent of convocation, and in the late somewhat arbitrary powers given to the bishops over curates, it is at least clear that it would have been but just if such powers had in some way been submitted to the judgment of the inferior clergy in their lower House of Convo-

cation, before they passed into a law. No doubt Parliament is unlimited in its power of legislation ; *but the true, and I trust real, security that in cases like these, it shall be obliged to proceed constitutionally, is the Coronation Oath of the King, which binds in these cases his conscience as to the exercise of his parliamentary veto.*

Here, then, is the real legislative supremacy of the King over the Church—as unobjectionable in reality, if exercised faithfully, as any law can be.

But there is an evil, no doubt ; and the real evil is this : The legislative power of the Church since Bishop Hoadley's days has fallen into complete abeyance. I do not stop to inquire whether there were not then good reasons for suspending it. Probably there were. But it is a necessary branch of our constitution, and the Crown ought to be advised occasionally to suffer the Convocation to deliberate on Church matters. There is no fear of abuse so long as the Crown retains the initiative as to all the subjects of debate. But no system of law can well stand which is not accompanied by a power of amending from time to time those errors to which all human institutions are liable, and which from changes of manners and habits become in time more and more apparent. A qualified employment of the Church Legislature is essential to the healthy action of the English Church. Let me take the Gorham controversy as an instance. There was a decision of five Judges and two Archbishops, with one Judge and the Bishop of London dissenting, which overruled the opinion of the Bishop of Exeter, the diocesan, and that of the Judge of the Arches, Sir Herbert Jenner Fust. Surely, that was a case in which the expressions of the written law were so doubtful, that a declaratory Act of Convocation to avoid such doubts in future, was, to say the least of it, very desirable. Again, with respect to discipline, would it not be reasonable and decent at this moment for the Crown to ask the advice of the whole body of the Clergy as to the proper limits of Episcopal power over themselves, and the best mode of enforcing discipline and faithful obedience to the ritual of the Church ? Would not this be far better, to say the least of it, than the late somewhat irregular proceeding of the majority of the Bishops, in giving opinions without any jurisdiction to enforce them, and offering advice which every one is at liberty to follow or reject at his pleasure ? And why might not her Majesty have been advised, instead of sending a letter respecting Lord Ashley's monster petition to the Archbishop of Canterbury, to have referred that petition in a constitutional

manner to Convocation, whose decision would have been of real value, inasmuch as it would have bound the Clergy, by laying down a proper rule for their obedience? And how would Parliament be the worse for a little information on such subjects from those best acquainted with their details? The absence of this proper action of the Church renders, indeed, the presence of the Bishops in the Upper House, which impedes their usefulness as residents within their respective dioceses, imperatively necessary; and, I will add, that until this is altered, the presence of the inferior clergy in the Lower House ought not to have been prohibited, as it was within our own recollection. Perhaps, however, it would be better for both if they confined themselves to a healthy action in Convocation, and if both Houses consisted of laymen alone; and, as a substitute for Ecclesiastical Peers or Members adopted as a standing-order that no laws, relating to the doctrine, ritual, or discipline of the Church directly, should be passed until after or subject to the approval of Convocation. In this way both Bishops and Clergy would give to Cæsar, by abstaining from political questions altogether, the things of Cæsar, and to God, by retaining in spiritual matters the complete power of preventing all improper alterations in the Church—the things of God. On the other hand, the Parliament would not abdicate its supreme functions of legislation.

The laity, for it is the laity whom the Parliament (the King, Lords, and Commons) represents, have, I apprehend, a right to prevent any changes in the established laws of the Church in all matters, whether of doctrine, discipline, or ritual—and the sole right of enforcing, *by the civil power*, all the injunctions of the Church.

Even the right of assenting to the calling Councils of the Church, and of allowing their decrees, was not taken from the lay members of the Church, and was exercised by the supreme head of the State in their name. In this country it is exercised as to executive matters by the King, as to legislative matters by the King, Lords, and Commons in Parliament. Long may it continue to be so exercised. The confusion of these two separate powers of Church and State in the Papacy has been, I believe, the main cause of its unhappy corruptions. But this is too wide a field to enter upon, and requires a longer letter, and an abler correspondent.

Believe me, my dear Lord,

Faithfully yours,

A LAYMAN.

## TRANSLATIONS.

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HORACE. LIB. I., OD. 8.

‘Lydia, die per omnes.’

WHY, fond mamma, I prithee toil  
So much thy darling boy to spoil,  
Why make a milksop if you can ?  
Why always tell him to sit quiet,  
Why watch and regulate his diet ?  
That’s not the way to make a man.

Why does he fear the dust and sun,  
Why take a walk, but never run ?  
He used to ride a skittish pony ;  
He used to follow fox or hare  
O’er fields or fences, anywhere,  
Whether the road was smooth or stony.

He used to think it almost heaven  
To be enrolled amongst “ the Eleven ;”  
Stopt swiftest balls behind the wicket :  
Excelled at hocky ; at football  
He loved to play, and at “ the Wall”  
Would gallantly “ rouge in” to kick it.

But now forsooth he’s never found  
To bathe, for fear of being drowned ;  
And as for football—heaven forbid—  
He would not touch the greasy leather,  
Cuts cricket-matches altogether,  
And wears his gloves of softest kid.

Thus Thetis’ noble, gallant boy,  
Achilles, was kept back from Troy,  
Concealed with girls in bibs and caps ;  
Lest, at the sight of arms and steel,  
He might break forth and risk his heel  
In giving Lycians kicks and raps.



## HORACE LIB. II., OD. 8.

‘Ulla si juris tibi pejerati.’

IF thou couldst have thy whole desert,  
Or even half, thou little flirt—  
If but one tooth appeared less white,  
One sparkle left thy eyes less bright,  
One nail was bent, one hair awry,  
I'd trust thee—or at least I'd try.  
But thou, when all the powers divine  
Thou'st called to witness thou wert mine,  
And broke thy vows, art seen once more  
Just twice as pretty as before ;  
And all the wondering youths declare  
They never saw a girl so fair.  
Well, if this want of truth succeeds,  
Let's dream no more of virtuous deeds :  
We'll dance upon our mother's grave,  
And all the powers of darkness brave,  
Cheat the bright planets, and defy  
The mighty gods who never die.  
At all this Venus laughs amain :  
‘Scold on,’ she cries ; the Nymphs, her train  
Laugh too, whilst Cupid points his darts  
On bloody hone, to pierce fresh hearts.  
On, on, the tide of conquest flows,  
Each boy adores thee as he grows,  
While men, deceived by thee before,  
Threaten, but linger round thy door.  
The prudent mothers dread to see  
Their wealthy boobies follow thee,  
Whilst many an avaricious dad  
Sits trembling for his wilful lad.  
Nay, e'en the bride within her bower  
Doubts her new spouse, and dreads thy power,  
Lest he, enchanted by thy beauty,  
Should prove a traitor to his duty.

HORACE. LIB. IV., OD. 3.

‘Quem tu, Melpomene, semel.’

THOU, Tennyson, whose early days  
 The muse has nursed to noblest praise,  
 Wilt ne’er desire the Boxer’s name,  
 Or try the Turf in search of fame :  
 Nor e’en the strife of glorious war  
 Will draw thee, where the Russian Czar  
 Pours down his legions to the field,  
 Till forced by stronger arms to yield.

But from some deep sequestered glade,  
 By thy sweet notes more vocal made,  
 Or where the Atlantic’s hollow roar  
 Beats frequent on Freshwater’s shore ;  
 Near breezy downs, at close of day  
 Or dewy morn, thou lovest to stray,  
 And there, inspired, to pour along,  
 Thy immortality of song.

O gentle Muse, whose magic breath  
 Can rouse us in the arms of death ;  
 Who to mute things a voice canst give,  
 Canst dwell with man, and make him live ;  
 Our poet owes this power to thee,  
 This gift of heavenly minstrelsy ;  
 To thee he owes, that all proclaim  
 ‘Midst England’s bards, his honoured name.

HORACE. LIB. IV., ODE 9.

‘Ne forte credas interitura, quæ.’

THINK not this verse must surely die  
 Because composed on England’s coast,  
 By one unused such flights to try,  
 Whose Muse no honoured name can boast.

Though Milton’s wing can highest soar,  
 Yet gentle Spenser still may please,  
 Nor have we yet forgot to prize  
 Our Butler’s wit, our Waller’s ease.

Still Pope in sweetest verse delights,  
And learned Gray his place retains ;  
Still we rejoice in Southey's flights,  
Or Moore's Anacreontic strains.

Though Helen lives in Homer's song,  
Others before her left their home,  
Forgetful of their husband's wrong,  
With lovers far away to roam.

Others, like Teucer, bent the bow ;  
Great cities fell e'er Troy was known ;  
Hectors before have met the foe,  
And fought and died to gain renown.

Brave men before Atrides came,  
But all are to oblivion fled ;  
Unwept, unknown, each mighty name,  
They had no poet—and are dead.

Virtue unsung were England's shame—  
Let then my grateful numbers try,  
Denman, to praise thy honoured name,  
Nor let thy worth forgotten die.

'Twas thine law's balance to sustain,  
Careless of mob or monarch's frown ;  
Stern foe to fraud, untouched by gain,  
Friend both to people and the Crown.

Not sometimes scorned, and then caress'd  
By praise, or hatred as unjust,  
But always loved when dangers pressed,  
And one was sought whom all could trust.

All rallied round thee : thy deep voice  
Bade us exert our utmost power ;  
Thyself our model and our choice,  
To lead to victory in that hour.

He is not blest whom power can blind,  
Whom riches make with pride to swell,  
But he who wealth with equal mind  
Receives, and knows to use it well.

The depths of want unscared he tries ;  
Not death, but sin and shame he fears ;  
For friends and home he calmly dies,  
Unmurmuring, 'midst a nation's tears.

## SOPH. ANT., v. 332.

Πολλὰ τὰ δεινὰ κοῦδὲν ἀνθρώπου δεινότερον πέλει·  
 ταῦτο καὶ πολιαῦ πέραν  
 πόντου περιβρυχίοισιν  
 περῶν ὑπ' αἰδμασιν  
 θεῶν τε τὰν ὑπερτάταν Γῶν  
 ἄφθιτον ἀκαμάταν ἀποτρύεται  
 ἴλλομένων ἀρότρων ἔτας εἰς ἔτας ἵππει-  
 ω γένει πολεῦων.  
 κουφονόων τε φύλον ὀρνίθων ἀμφιβαλὼν ἄγει  
 καὶ θηρῶν ἀγρίων ἔθνη,  
 πόντου τ' εἰναλίαν φύσιν  
 σπείραισι δικτυακλώστοις  
 περιφραδῆς ἀνὴρ·  
 κρατεῖ δε μηχαναῖς ἀγραύλου  
 θηρὸς ἀρεσσιβάτα, λασιαύχενά θ'  
 ἵππον ἄξεται ἀμφίλοφον ζυγὰν σῦρει-  
 όν τ' ἀκμήτα ταῦρον.  
 καὶ φθέγμα καὶ ἀνεμόεν φρόνημα καὶ ἀστυνόμους  
 ἀργὰς ἐδιδάξατο καὶ δυσαύλων  
 πάγων αἶθρια καὶ  
 δύσομβρα φεύγειν βέλη παντοπόρος·  
 ἄπορος ἐπ' οὐδὲν ἔρχεται  
 τὰ μέλλον. Ἄϊδα μόνον  
 φεύξιν οὐκ ἐπάξεται· νόσων δ' ἀμηχάνων φυγὰς  
 ξυμπέφρασται.  
 σοφόν τι τὸ μηχανάεν τέχνας ὑπὲρ ἐλπίδ' ἔχων  
 ποτὲ μὲν κακόν, ἄλλοτ' ἐπ' ἐσθλὸν ἔρπει·  
 νόμους περαίνων χθονὸς  
 θεῶν τ' ἔνορκον δίκαν ὑψίπολις·  
 ἄπολις ὅτω τὸ μὴ καλὸν  
 ξύνεστι τόλμας χάριν.  
 μήτ' ἐμοὶ παρέστιος γένοιτο μήτ' ἴσον φρονῶν  
 ὅς τάδ' ἔρδει.

IF all creation's works we scan,  
 There's nought so wonderful as man.  
 O'er the dark ocean's foaming tides,  
 Fearless his little bark he guides ;  
 Nor ever doubts, all dangers past,  
 To find the port he seeks at last.  
 The earth, benignant goddess, feels  
 His labouring plough's revolving wheels,  
 As aided by the horse and steer,  
 His toil proceeds from year to year.  
 'Tis his with subtle springe to snare  
 The winged inhabitants of air ;  
 The stag reluctant in the toil,  
 Becomes the vigorous hunter's spoil ;  
 In meshy folds the finny prey,  
 Struggling in vain, confess his sway ;  
 Armed with the spear, he seeks the bear,  
 And tracks the lion to his lair ;  
 The warrior-horse, at his behest,  
 Abates the terror of his crest ;  
 By art the stubborn mule he broke,  
 And bowed the bull beneath the yoke.

To man, too, by indulgent heaven,  
 The power of winged words was given ;  
 Immortal reason's strength assigned,  
 Wide-stretching thought and lofty mind.  
 To him the social laws belong  
 That awe the bad, and curb the strong,  
 Uphold the weaker, banish strife,  
 And guard the paths of civil life.  
 To shield him from the inclement air,  
 His hands the stately house prepare :  
 There, safely sheltered, he defies  
 Descending rains and wintry skies.  
 Conqueror of all, by none surpassed,  
 To death alone he yields at last :  
 Yet oft, with medicine's healing power,  
 Procrastinates the fatal hour.

## SOPH. ANTIGONE.

Ἔρως ἀνίκατε μάχαν, Ἔρως ὃς ἐν κτήμασι πίπτεις,  
 ὃς ἐν μαλακαῖς παρειαῖς νεάνιδος ἐννυχεύεις·  
 φοιτᾷς δ' ὑπερπόντιος ἔν τ' ἀγρονόμοις αὐλαῖς·  
 καὶ σ' οὐτ' ἀθανάτων φύξιμος οὐδεὶς οὐθ'  
 ἀμερίων ἐπ' ἀνθρώπων· ὁ δ' ἔχων μέμνην·  
 σὺ καὶ δικαίων ἀδίκους φρένας παρασπᾷς ἐπὶ λώ-  
 βα· σὺ καὶ τόδε νείκος ἀνδρῶν ξύναιμον ἔχεις ταραξας·  
 νικᾷ δ' ἐναργῆς βλεφάρων ἥμερος εὐλέκτρον  
 νύμφας, τῶν μεγάλων πάρεδρος θέσμων.  
 ἄμαχος γὰρ ἐμπαίζει θεὸς Ἀφροδίτα.

With all these varied powers endued,  
He's prone to evil as to good.  
Sometimes he seeks the patriot's fame,  
And grateful cities bless his name ;  
Sometimes an exile doomed to roam,  
By guilty daring driv'n from home.  
O may the righteous gods forbend  
That such may be my guest or friend !  
Lest, when around me lightnings fly,  
And thunders threaten judgment nigh,  
Enveloped in his fate I fall,  
And one quick vengeance swallow all.

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*(Imitated from the Greek.)*

OH ! thou that dwell'st beyond the sky,  
That nestlest in the virgin's eye,  
That on the maiden's downy cheek  
Dost thine inviting pillow seek,  
Hail ! hail ! thou king of gods above,  
Mighty, unconquerable Love.

Thine is the slow consuming flame  
That feels the pang it dare not name ;  
Thine is the long, long breath'd sigh,  
The flushing cheek, the downcast eye,  
The pulse that now can scarcely beat,  
Now rages with excessive heat.

Such was the flame that could inspire  
The mistress of the Lesbian lyre,  
From high Leucate's craggy steep,  
Headlong to plunge beneath the deep ;  
Ah ! cruel god, thy powerful hand,  
What mortal yet could e'er withstand.

Yet fairer prospects thou canst show,  
The fairest prospects here below :  
Thine is each sweet domestic scene,  
The tranquil look, the joy serene,  
The happiness, the zest of life,  
The soft, endearing name of wife.

## FRAGMENT.

ὅτε λάρνακι ἐν δαιδαλέᾳ ἄνεμος  
 βρέμῃ πνέων κινηθεῖσά τε λίμνα  
 δείματι ἔριπεν οὐτ' ἄδιάντοισι παρειαῖς  
 ἀμφὶ τε Περσεῖ βάλε φίλαν χέρα  
 εἶπεν τε· ὦ τεκος  
 οἷον ἔχω πόνον  
 σὺ δ' ἄωτεῖς, γαλαθηνῶ τ' ἦταρι κνώσσεις  
 ἐν ἀτερπεῖ δώματι χαλκεογόμφῳ τε  
 νυκτιλαμπεῖ κυανέῳ τε δνόφῳ  
 σὺ δ' ἀναλέαν ὑπερθε τεὰν κομᾶν  
 παρίοντος κύματος οὐκ ἀλέγεις  
 οὐτ' ἀνέμου φθόγγων πορφυρέα  
 κείμενος ἐν χλάνιδι πρόσωπον καλόν,  
 εἰ δέ τοι δεινὸν τό γε δεινὸν ἦν  
 καὶ κέν ἐμῶν ῥημάτων  
 λεπτόν ὑπεῖχες οὐδας  
 κέλομαι εὖδε βρέφος·  
 εὐδέτω δὲ πόντος·  
 εὐδέτω ἄμετρον κακόν·  
 ματαιοβουλία δέ τις φανείῃ  
 Ζεὺ πάτερ ἐκ σέο.



And when distress and dangers fright,  
And change those prospects once so bright ;  
When sickness, or when sorrows come,  
And life just trembles o'er the tomb—  
Thine is the noblest prospect given,  
Of union in a brighter heaven.

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·WHEN all around the frail-built skiff,  
The howling tempest blew,  
Round Perseus' neck, her infant child,  
Her arms the mother threw.

And oh ! she said, my child, what pangs  
This bursting heart torment ;  
Yet, sweet, thou sleep'st, and hearest not  
Thy mother's sad lament.

Sweetly thou slumberest, my babe,  
E'en in this wretched place,  
Thou heedest not the dashing spray  
That wets thy tender face :

Thou heedest not the rushing wind  
That round thee blows so keen :  
Thou heedest not the dismal night,  
When not a star is seen.

Wrapt in thy purple robe, thou liest—  
Sleep on, my only joy,  
And sleep ye winds, and sleep ye cares,  
That this sad breast annoy.

Save, Father Jove, thy son, whom now  
This raging tempest braves,  
And send some messenger from heaven  
To calm the troubled waves.

## ANACREON.

λέγουσιν αἱ γυναῖκες  
 Ἐνακρέων γέρων εἶ  
 λαβὼν ἔσοπτρον, ἄθρει  
 κόμας μὲν οὐκ ἔτ' οὔσας  
 ψιλὸν δέ σευ μέτωπον,  
 ἐγὼ δὲ τὰς κόμας μὲν  
 εἶτ' εἰσὶν, εἶτ' ἀπῆλθον  
 οὐκ οἶδα· τοῦτο δ' οἶδα  
 ὥς τῷ γέροντι μᾶλλον  
 πρέπει τὰ τερπνὰ παίζειν  
 ὅσῳ πέλας τὰ μοίρας.

I'm often by the women told,  
 'Anacreon, you're growing old ;  
 'Come, take a glass, yourself survey,  
 'Those hairs, the few still left, are grey ;  
 'Look at the wrinkles in your face,  
 'Your figure, too, has lost its grace.'

Now, truly, whether this be so,  
 I neither know, nor care to know ;  
 But this I know, and will maintain,  
 That if but few short years remain,  
 If life so soon must take its flight,  
 And I must bid the world good night,  
 'Tis time to catch each passing hour,  
 To cull the sweets from every flower,  
 And try, by frolic and by fun,  
 To live at least ten years in one.

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A REPLY TO THE ABOVE.

ANACREON, my jolly friend,  
 And is this all ? Is this your end ?  
 I think I know a wiser plan,  
 More suitable than yours to man.  
 The good man culls the flowers that grow  
 Within God's Paradise below,  
 Not those whose fair and tempting fruit  
 Is grafted on a bitter root.  
 As age creeps on, and strength decays,  
 Higher he sounds the Hymn of Praise ;  
 With thoughts subdued and heart refined,  
 He seeks the good of all mankind :  
 Though still around, without, within,  
 There dwells a load of conscious sin,  
 He knows a Friend whose tender care  
 For him that heavy load will bear ;  
 To whom, when fiercest tempests roll,  
 Secure he trusts his weary soul.  
 Thus, chastened by the fire of love,  
 He walks on earth, but dwells above.  
 You live ten years in one—but he  
 In one thus gains—Eternity.

S

*From the Same.*

Αἱ Μοῦσαι τὸν Ἑρωτα  
 δήσασαι στεφάνοισι  
 τῷ κάλλει παρέδωκαν  
 καὶ νῦν ἡ Κυθήρεια  
 ζητεῖ λύτρα φέρουσα  
 λύσασθαι τὸν Ἑρωτα,  
 κἂν λύσῃ δέ τις αὐτὸν,  
 οὐκ ἔξεισι μενεῖ δέ·  
 δουλεύειν δεδίδακται.

## FROM THE ANTHOLOGY.

## I.

Πέμπω σοί Ῥοδόκλεια τόδε στέφος ἄνθεσι καλοῖς  
 αὐτὸς ὑφ' ἡμετέραις πλεξάμενος παλάμαις.  
 ἔστι κρίνον ῥαδὴν τε κάλυξ νοτερὴ τ' ἀνεμώνη,  
 καὶ νάρκισσος ὑγρὸς καὶ κυναναγὲς Ἴον.  
 ταῦτα στεψαμένη λήξον μέγα λυχνος ἑοῦσα,  
 ἀνθεῖς καὶ λήγεις καὶ σὺ καὶ ὁ στέφανος.

## II.

τᾷδ' ὑπὸ τὰς πλατάνους ἀπαλῶ τετρυμένος ὕπνῳ  
 εὗδεν Ἑρως, Νυμφαῖς λαμπάδα παρθέμενος·  
 Νῦμφαι δ' ἀλλήλησι, τί μέλλομεν ; αἶθε δε τοῦτ' ἄ  
 σβέσσαμεν, εἶπον, ὁμαῦ πῦρ κραδίης μερόπων·  
 λαμπὰς δ' ὥς ἔφλεξε καὶ ὕδατα, θερμὸν ἐκείθεν  
 Νῦμφαι Ἑρωτιάδες λουτροχοεῦσιν ὕδωρ.

## III.

τὰν ὀλοὰν Μήδειαν ὅτ' ἔγραφε Τιμομάχου χεῖρ  
 ζαλῶ καὶ τέκνοις ἀντιμεθελκομέναν,  
 μύριον ἄρατο μόχθον ἵν' ἦθεα δισσὰ χαράξῃ,  
 ὦν τὸ μὲν εἰς ὄργαν νεύε, τὸ δ' εἰς ἔλεον.

THE Muses, with flowers,  
Young Love having tied,  
Placed him, bound in the bowers,  
Queen Beauty beside.  
Cytherea, lamenting,  
Brought gifts rich and rare,  
That Beauty, relenting,  
Might give up her heir.  
But the young rogue, delighted,  
With Beauty remains ;  
Even freedom is slighted—  
He's proud of his chains.

---

## I.

TAKE, Rodoclea, take this flowery band,  
Twined in a chaplet by thy lover's hand :  
See the proud lily with the blushing rose,  
And bright anemone, their lines disclose :  
Here soft Narcissus sheds a golden hue,  
Mixed with the violet's deepest, tenderest blue :  
Yet crowned with these, boast not thyself, sweet maid,  
For thou, like them, art born to bloom and fade.

## II.

Young Love lay sleeping by a fountain's side ;  
Close lay his torch. The nymphs, collecting, cried,  
'Let's quench that torment. Oh ! how blest, if then  
Drowned with that flame were all the pangs of men.'  
Alas, poor nymphs, the torch, with magic power,  
Unquenched, has fired the waters. From that hour  
The love-sick fountain pours a boiling stream,  
And bubbles upward in a jet of steam.

## III.

Here dead Medea, from the sculptor's hands,  
Distracted with contending passions, stands.  
Well hath the mighty master both expressed,  
That fired by turns the mother's jealous breast—

ἄμφω δ' ἐπλήρωσεν· ὅρα τύπον. ἐν γὰρ ἀπειλῇ  
 δάκρυον ἐν δ' ἐλέῳ θυμὸς ἀναστρέφεται.  
 ἄρκει δ' ἅ μέλλησις, ἔφα σοφός· αἷμα δε τέκνων  
 ἔπρεπε Μηδεία, κοῦ χερὶ Τιμομάχου.

## IV.

Παῖδα πατὴρ Ἄλκων ὀλοῶ σφιγχθέντα δράκοντι  
 ἀθρήσας δειλῇ τόξον ἔκαμψε χερὶ·  
 θηρὸς δ' οὐκ ἀφάμαρτε, διὰ στόματος γὰρ οὔστος  
 ἦϊξεν τυτθοῦ βαιὸν ὑπερθε βρέφους.  
 παυσάμενος δὲ φόνοιο παρὰ δρυὶ τῇδε φαρέττην  
 σῆμα καὶ εὐτυχίης θῆκε καὶ εὐστοχίης.

## V.

εἴαρος ἦνθαι μὲν τὸ πρὶν ρόδα, νῦν δ' ἔνι μέσσω  
 χείματι πορφυρέας ἐσχάσαμεν κάλυκας,  
 Σῆ ἐπιμειδήσαντα γενεθλιῇ ἄσμενα τῇδε  
 ἠοί, νυμφιδίων ἀσσοτάτη λεχέων·  
 καλλίστης ὀφθῆναι ἐπὶ κροτάφοισι γυναικὸς  
 Δωϊὸν ἢ μῖμναι ἡρινὸν ἢ ἔλιον.

## VI.

χειμερίοις νιφάδεσσι παλυνομένα τιθὰς ὄρνις  
 τέκνοις εὐναίας ἀμφέχεε πτέρυγας·  
 μέσφα μιν οὐράνιον κρύος ὤλεσεν· ἦ γὰρ ἔμεινεν  
 αἰθέρος οὐρανίων ἀντίπαλος νεφέων.  
 Πρόκνη καὶ Μήδεια κατ' Ἄϊδος αἰδέσθητε  
 μητέρες, ὀρνίθων ἔργα διδασκόμεναι.

## VII.

οὔτε ρόδον στεφάνων ἐπιδεύεται οὔτε σὺ πέπλων  
 οὔτε λιθοβήτην πότνια κεκρυφάλων.  
 μάργαρα σῆς χροίης ἀπολείπεται οὐδε κομίζει  
 χρυσὸς ἀπεκτῆτου σῆς τριχὸς ἀγλαΐην·  
 Ἰνδὴ δ' ὑάκινθος ἔχει χάριν αἶθοπος αἴγλης  
 ἀλλὰ τεῶν λογάδων πολλὸν ἀφαιροτέρην.  
 χεῖλεα δὲ δροσύντα καὶ ἡ μελίφυρτος ἐκείνη  
 ἦθεος ἀρμονίη κεστὸς ἔφν Παφίης·  
 τούτοις πᾶσιν ἐγὼ καταδάμναμαι· ὅμμασι μούνοισι  
 θέλγομαι, οἷς ἐλπίς μελιχὸς ἐνδιάει.

Revenge and Love—behold that threatening tear  
That trembles in her eye. See anger here  
Struggling with pity, whilst the marble still  
Seems doubting. Here must end thy wondrous skill,  
Timomachus ; Medea's hand may give  
Her babes to death, but thine must bid them live.

## IV.

When father Alcon saw his darling child  
Enfolded by a snake, with terror wild  
He snatched his bow—the whizzing arrow flew  
Right through the monster's jaws, and yet so true,  
That though it grazed his head, it missed the boy.  
Here, on this spreading oak he hung the bow,  
His happy luck and happy hit to show.

## V.

We are roses, the flourishing children of spring,  
Yet in the midwinter our buds we unfold :  
For the birthday of Beauty a garland we bring,  
And are proud in her service to wither with cold.  
For 'tis better on such a sweet brow to appear,  
Than to wait for the sunshine and bloom of next year.

## VI.

By heavy snow and cruel frost oppressed,  
The mother perished on her humble nest :  
Still o'er her brood her covering wings she spread,  
Till stiffening, she herself, poor bird, lay dead.  
Medea, Procne, this example see,  
And blush to learn what mothers ought to be.

## VII.

The rose needs no perfume, then why desire,  
Sweet, for thyself, rich gauds or silk attire ;  
The whitest pearl can't with thy skin compare,  
And gold might borrow splendour from thy hair.  
Each sparkling gem that India's shore supplies  
Might well exchange its brightness for thine eyes.  
Those pouting rosy lips, that graceful mien,  
Win like the cestus of th' Idalian queen.  
Such wondrous charms would drive me to despair,  
But that those soft relenting looks are there.

## SONG. (GRAY.)

THYRSIS, when we parted, swore  
 In the spring he would return :  
 Ah ! what means yon violet flower,  
 And the bud that decks the thorn :  
 'Twas the lark that upward sprung !  
 'Twas the nightingale that sung !

Idle notes ! untimely green !  
 Why this unavailing haste ?  
 Western gales and skies serene  
 Speak not always winter past ;  
 Cease my doubts, my fears to move,  
 Spare the honour of my love.

---

CUPID and my Campaspe play'd  
 At cardes for kisses ; Cupid paid :  
 He stakes his quiver, bow, and arrows, .  
 His mother's dove and teame of sparrows ;  
 Loses them too ; then down he throws  
 The coral of his lippe, the rose  
 Growing on's cheek (but none knows how),  
 With these the crystal of his browe,  
 And then the dimple of his chinne,  
 All these did my Campaspe winne :  
 At last he set her both his eyes :  
 She won, and Cupid blind did rise.  
 O Love ! has she done this to thee ?  
 What shall, alas ! become of mee ?

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## FROM WORDSWORTH.

SHE dwelt among the untrodden ways  
 Beside the springs of Dove ;  
 A maid whom there were none to praise,  
 And very few to love ;



## LATINÆ.

JURAVIT Thyrsis jam discessurus, amicæ  
 Adfore se reditu veris, ut ante, domi.  
 Eheu ! jam fulgent violæ, jam spina tumescit ;  
 Altisonum cœlo fundit Alauda melos.  
 Per nemus assuetos renovat Philomela dolores,  
 ‘ Ver redit’ exclamant omnia—Thyrsis abest.  
 Raucisoni cantus—nimis importuna puellæ  
 Temperies ! cur vos sic properâsse juvat ?  
 Non semper moustrant imbres, non aura Favonî  
 Elapsos hyemes præteritumque gelu.  
 Phœbe, retro propera, versæque recurrite menses,  
 Integer ut saltem restet amantis honor.

## LATINÆ.

LUSERUNT Amor et Næra nostra  
 Par impar—dubiâque sorte—primò  
 Contrà basia ponit hic pharetram,  
 Arcum, tela, malâque victus arte,  
 Discedit—gracilesque tum columbas  
 Dilectas Veneri, novumque currum  
 Tractum passeribus—labella rubra  
 Coralî minium æmulata—frontem  
 Crystallo nitidum—rosas genarum  
 (Quis unquam dedit has tibi, Cupido ?)  
 Amittit furiosus—et venusti  
 Menti mollitiem. Duos ocellos  
 Tandem ponit, et hos proterva Nympha  
 Ridens abstulit. Ille cæcus errat.  
 Quod si fecerit hæc tibi Cupido,  
 Quæ spes nunc misero mihi relicta est ?

SEMOTÂ latuit cavâque valle,  
 Quà Dovæ gracilis susurrat unda,  
 Virgo, nec variis procis petita,  
 Nec laudata levique nota vulgo.

A violet by a mossy stone,  
Half-hidden from the eye !  
Fair as a star, when only one  
Is shining in the sky.

She lived unknown, and few could tell  
When Lucy ceased to be :  
But she is in her grave, and oh !  
The difference to me !

Sic densâ viola abditâque sylvâ  
Floret semisepulta—sic tenebras  
Inter stella micat, novamque Nocti  
Addit, sola, decus. Tuum sepulchrum  
Nescit, Lucia, turba, nescit horam  
Mortis, cara, tuæ : sed heu doloris  
Quanti restat onus mihi relicto.

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Inscription for a Drinking-cup made from an old Mulberry-tree growing in  
a Schoolyard, and presented to an ancient scholar of the school.

ME cujus patulâ prius sub umbrâ  
Lusisti, puer inscius futuri,  
Oppressam senio procella fregit,  
Nunc mirâ faber arte fecit auro,  
Splendentem calicem, merique odora  
En læti tibi sum ministra Bacchi.  
At tu, si sapias, memor vetustæ  
Mori, carpe diem brevique vitâ  
Spem longam reseces ; tibi mihi que  
Eheu ! non revocanda fugit ætas.



## APPENDIX I.

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Of the following Judgments, the first is here appended as interesting from the political question to which it relates. The two others which follow have been indicated by distinguished authority as exhibiting Baron Alderson, the former in the capacity of a Common Law Judge, the latter in an important case in Equity.

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### JUDGMENT No. 1.

#### MILLER *v.* SALOMONS.

MY Brother Martin has fully stated the pleadings and the findings of the jury in this case, and it is not necessary, therefore, that I should repeat them. On several points in this case there is no difference of opinion on the Bench. We all agree in thinking that, of the four points made by Sir Fitzroy Kelly, three at all events cannot be supported. The only point on which we entertained any doubt, and on which I regret to find we are not now agreed, is whether, in taking the oath of abjuration, Mr. Salomons, the present defendant, was bound to have added the words "upon the true faith of a Christian" to those which he did consent to utter and attest by his oath; or whether, by designedly and of purpose omitting those words, he is in fact to be deemed not to have taken that oath at all, and so to have incurred the penalties contained in the 17th section of the 1 Geo. I. st. 2, c. 13. It is on this point alone, therefore, that I shall deliver my judgment; and I am obliged to say that I differ with my learned brother in his view of the case, and have come to a clear opinion that the plaintiff is entitled to our judgment. The real question is, whether these words are a part, and an essential part, of this oath, and are to be used by all who are required to take it, unless they have some special privilege for omitting them expressly given by the Legislature. I take the principles on which our decision is to rest to be quite undisputed. Where an oath is to be taken in order to establish affirmatively or negatively any proposition

by a witness, I agree that *Omichund v. Barker*\* has settled that it ought to be taken in that form, and upon that sanction, which most effectually binds the conscience of the party swearing. Thus, a Jew is to be sworn on the Book of the Law, and with his head covered; a Brahmin by the mode prescribed by his peculiar faith; a Chinese by his special ceremonies, and the like. But it is also clear, and expressly admitted by Lord Chief Justice Willes in his judgment, referring to Lord Coke's authority on the subject, that in the case of oaths of office or of qualification, where the very form of the oath as well as the oath itself is prescribed by the Legislature, there the directions of the Legislature must be literally followed; and the oath must, and can only lawfully, be taken in the prescribed form, until that form be altered by the same authority which appointed it. The question therefore here is, have the Legislature required the oath of abjuration to be taken in a prescribed form, and are the words "upon the true faith of a Christian" a part of that prescribed form? Now, it is to be observed, and it is of the greatest importance to advert to this, that the Legislature uniformly speak of "*the* oath of abjuration" where they require it to be taken: they do not use the indefinite article, but the definite one. The inference is inevitable, that they contemplate the allowance of but one oath of abjuration, in one form, to be used by all persons required to take that oath. Whatever form of oath therefore was required to be taken by the Roman Catholic, the same form was to be adopted by the Protestant, whether churchman or dissenter; and the same (unless there be some special provision made, as in some cases there is) must be taken by the Jew, or the Turk, or any other religionist who may be liable to take the oath, as a qualification for office, or for any other required purpose. Unless this were so, the Legislature would never have fixed a form, but would have said that such persons must take *an* oath of abjuration to the substance and effect following, and not '*the* oath' of abjuration in the tenor following, as they have done. It seems to me that the legitimate result of my Brother Martin's reasoning is, therefore, to make the Legislature, by a somewhat forced construction, use this indefinite mode of expression, whereas they have clearly used a definite one; so that it would follow, according to his view of the case, that they must be supposed to have allowed one form of the oath of abjuration to be used by Jews, another by Roman Catholics, and possibly another by persons of a different persuasion. This, however, is a conclusion so contrary to the words they have used that I cannot bring myself to adopt it. If then there be, in the absence of any special exception expressly made by the Legislature, but one form of the oath of abjuration to be adopted by all, we must proceed to inquire whether these words are an essential part of that form. I proceed therefore to examine how this clause first got into the oath of abjuration. It is not found in the oath prescribed in the reign of

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\* Willes, 538.

Elizabeth, but is first found in 3 Jac. I. c. 4, which was passed upon the discovery of what is called the Gunpowder Plot. It is a curious fact, only lately brought to light by the publication of a MS. from the Bodleian Library at Oxford, by Mr. Jardine, that one of the main proofs used by Lord Coke, when he laid that case before the jury, was the production of a little book, found in the chamber of Francis Tresham, one of the conspirators mentioned in the Act, called 'A Treatise on Equivocation.' This treatise, corrected in the handwriting of the Jesuit Garnet, and having the imprimatur of Blackwell, the then arch-priest of England, discusses the question how far a person called upon, as he thinks unjustly, to make a declaration or promise, or to depose or swear to a fact within his personal knowledge, may lawfully equivocate, by using ambiguous words, or reserving mentally a sense of the words used different from that outwardly expressed by him, without incurring the sin of lying or the guilt of perjury. The question is there resolved in the affirmative, that he may lawfully do this; and, amongst other propositions, it is affirmed, that even if he be required, by the form of the oath tendered, in terms to swear 'without equivocation or mental reservation,' he may still equivocate and mentally reserve, without danger to his soul. But in that treatise there is one exception to all this. No person is allowed to equivocate or mentally reserve, without danger, if he does so, of incurring mortal sin, where his doing so brings apparently his true faith towards God into doubt or dispute. For though he may lawfully on proper occasions omit to avow his true faith, he must never, by what he says or swears, bring apparently his true faith into doubt or dispute with others. Now, this treatise being before the Government of King James I., and in the hands of his Attorney-General, and used at the trial of the Gunpowder Plot, we find in the same year, 1605, that in a statute enacted mainly with reference to the same plot, these words 'upon the true faith of a Christian' are for the first time added to the oath of obedience then framed, and for the obvious purpose, as I think, of preventing effectually all such equivocation, by conclusively fixing a sense to that oath which by no evasion or mental reservation should be got rid of, without (even in the opinion of the Jesuit doctors themselves) incurring the penalty of mortal sin. They were therefore, I think, not merely a part of that oath, but the most effectual and stringent provision in it. I do not, therefore, call this properly an oath intended as a test of Christianity—which it was not—nor as a mere test of obedience, but an oath intended as a test of obedience, and framed so as to be a test against all equivocation also. But this—though the fact to which I have referred is a very curious confirmation of the view I take of the importance of the words on which this case turns—is not necessary to my opinion. It would be quite sufficient, I think, to affirm that the Legislature have said expressly, as they do, that an oath is to be taken, 'the tenor of which oath hereafter followeth'—for 'the tenor' implies that all the words which follow thereafter

are part of the oath itself. It is to be observed that, in all the course of legislation on this subject, either these words, 'the tenor of the oath,' or equivalent expressions, are throughout used by the Legislature. I will shortly refer to them. In the first place, this same oath of obedience was by stat. 7 Jac. I. extended and applied to the members of the Legislature, and to all persons enumerated who exercise any functions or hold any offices in the State. No one reading this Act can, I think, doubt that the Legislature meant this enactment to be general, and without any exception of persons, whatever might be their religious opinions. The 30 Car. II., st. 2, left these oaths untouched, adding, however, a declaration against transubstantiation. It is unnecessary to refer to the intermediate Acts of the 1 Will. & M., st. 1, cc. 1 and 8, more particularly. I come to the 13 Will. III., c. 6, which first established the oath of abjuration; and there the words are: that the persons required to do so shall take 'the oath as hereinafter mentioned;' setting out expressly the form, including and ending with the words, 'upon the true faith of a Christian,' introduced before into the old oath of obedience. This form of oath was not only to be taken, but subscribed also; which shows, I think (for there is no trace of double subscriptions to be found), that one form only was to be allowed and adopted without addition or omission. With certain alterations in the reign of Queen Anne, applicable only to altered circumstances, and therefore not material to be adverted to, things so remained up to the 1 Geo. I., st. 2, c. 13, when the three oaths of allegiance, supremacy, and abjuration, were for the first time put together; and the Legislature there expressly require them to be taken 'in the words following,' and then set forth the oath of abjuration, containing the words 'upon the true faith of a Christian.' Now, how is it possible to give effect to the expression 'in the words following' if we do not use all the words which follow? I cannot see how this difficulty can be got over by construction. Lastly, we come to the 6 Geo. III., c. 53, on which this case depends, by which it is provided that the oath of abjuration (the Legislature still using the definite article 'the') shall be administered in such manner and form as is hereinafter set down and prescribed, that is to say, &c.; and then, as before, the oath is set out, ending with the same words, 'upon the true faith of a Christian.' Now, when I find the Legislature beginning with 'the tenor of the oath,' and going on with 'the oath as hereinafter mentioned,' then saying 'the oath in the words following,' and finally 'the oath to be administered in such manner and form as is hereinafter mentioned and prescribed,' and find also that all these expressions are followed by a form containing these very same words, how am I to escape from the conclusion that these words do form a part of the oath prescribed? But it is argued that to apply it to the Jews involves an absurdity, and that according to what has been, not improperly, called the golden rule of construction, we must modify the literal construction of these Acts so as to get rid of the absurdity: I add (and I hold it to be



part of the rule), only so far as is absolutely necessary to get rid of the absurdity. But let us see whether it is absurd to apply these provisions to the Jew as well as to the Christian. The Legislature did not require the first oath of obedience to be taken by all, but only by such persons as were reasonably liable to suspicion by two justices of the peace acting judicially, or by persons who had omitted to do certain acts. It may be, and it perhaps was, unjust in the Legislature so to enact. But we must take good care, in applying the golden rule, not to confound injustice with absurdity. The reason of the rule is, that the absurdity induces us to conclude that the Legislature did not so intend. I am afraid, if we say that in old times, such as those of the Gunpowder Plot, the Legislature must be held not to have intended what now we judge to be unjust, we shall ourselves be guilty of the grossest absurdity. I am afraid that I should, if that were the proper principle to be adopted, be obliged to hold that almost all the penal statutes had no operation at all, for I think that the most of them were grievously unjust. I can see nothing in this or the subsequent Acts containing the oath of abjuration to induce me to believe that the Legislature did not intend literally what they said expressly—viz., that these Acts, and this oath, were to apply to, and be taken by, all the classes of persons therein named, of whatsoever form of religion, Catholic, Protestant, Quaker, or Jew, they might be, and in the very form set down. And I am confirmed, as I think conclusively, in this, by finding that where, on its being brought before them, the law was found to press unfairly on any of these persons, the Legislature has from time to time relieved them, by dispensing with the swearing, and allowing the Quakers to affirm, and by dispensing with these very words of the oath ‘upon the true faith of a Christian’ in the case of the Jews in certain cases. That dispensation unfortunately does not extend to this case, but its limited existence seems to me to show conclusively the opinion of the Legislature itself on this point.

The words of the 13 Geo. II., c. 7, s. 3, are very remarkable. The Act recites, ‘Whereas the words “upon the true faith of a Christian” are contained in the latter part of the oath of abjuration, and whereas the people professing the Jewish religion may thereby be prevented from receiving the benefit of this Act,’ &c.; and it enacts, that when a Jew proposes to take the oath, these words shall be left out; and it also refers to the limited indulgence as to those same words given to the Jews, relieving them from the difficulties imposed by those same words. That was by an Act passed in the 10 Geo. I., intituled ‘An Act for explaining and amending an Act of the last Session of Parliament, intituled “An Act to oblige *all Persons being Papists* in Scotland, and *all Persons* in England to take this Oath of Abjuration in its Terms.”’ Now this recital clearly shews that Jews in England were included in the term ‘all persons’—as indeed could not well be doubted—and that but for those indulgences they were always bound to take the oath of abjuration including these words: and this Act was passed in 1739,

when Lord Hardwicke was Chancellor, and Sir Dudley Ryder and Sir John Strange were Attorney and Solicitor-General: and the Acts of the 9 & 10 George I. were passed when Lord Macclesfield was Chancellor, and Lord Raymond and Lord Hardwicke Attorney and Solicitor-General. But it is now said that these three Acts were wholly unnecessary, and that these great lawyers ought to have known it; and we are now, in the year of our Lord 1852, to awake from a sleep into which these great lawyers and the whole Legislature of those periods fell, and in which all persons ever since have remained, from 1739 down to the time of this argument—for within our time these words have been advisedly left out of the oath in the case of the Jews, by Lord Campbell, in an Act framed by him. I cannot, therefore, believe this to be a reasonable conclusion. And besides, this argument really goes too far: for its legitimate extent ought to be to exempt Jews from taking any oath of abjuration under any circumstances whatever—seeing that, as it is contended, it is absurd that they should take any oath thus framed; and no other oath is expressly provided for them by the Legislature. No one surely can suppose that the Legislature intended this result, and indeed Sir F. Kelly did not even venture to argue to this extent.

But let us now for a moment concede that there is an absurdity in requiring all such persons under all circumstances to take such an oath, and that under some circumstances it would be impossible to suppose that Jews were to be called on to take it. Then I say that the golden rule only requires us to stop where the absurdity stops. It cannot surely be absurd to say that the Legislature may have really intended to require such an oath from all men, Jews or Christians, who take office or purpose to exercise important legislative functions. If so, then it follows that the utmost that can be done would be to say, that these Acts as to Jews must be in construction confined to the cases of their taking office, or proposing to exercise legislative functions, and that in the other cases alone they are not bound to take the oath at all. But such a construction (even if adopted, which I think would be wrong), could be of no service in the present case.

I am therefore of opinion that these words do form a distinct and essential part of the oath; because they interpret, and give a peculiar and stringent sense to, the previous words of the oath, and are in fact incorporated in and form part of each sentence in that oath, so that without them no part of the oath has exactly the same meaning that it has when they are added to it. I believe that they were advisedly and on great consideration originally adopted, (perhaps on Sir Edward Coke's advice), and that they have been found effectual, and for that reason retained ever since. I think, therefore, that the oath is not taken at all if these words are omitted by the person swearing, and that Mr. Salomons has therefore voted without previously taking the oath of abjuration.

I do most seriously regret that I am obliged, as a mere expounder of the law, to come to this conclusion—for I do not believe that the

case of the Jews was at all thought of by the Legislature when they framed these provisions. I think that it would be more worthy of this country to exclude the Jews from these privileges (if they are to be excluded at all, as to which I say nothing,) by some direct enactment, and not merely by the casual operation of a clause, intended apparently in its object and origin to apply to a very different class of the subjects of England. I regret also that the consequences are so serious, involving disabilities of the most fearful kind, in addition to the penalty sought to be recovered in this action, and in fact making Mr. Salomons for the future almost an outlaw. It is to be hoped that some remedy will be provided, for these consequences at least, by the Legislature. My duty is, however, plain. It is to expound the law, not to make it; to decide on it as I find it, not as I may wish it to be.

It seems to me that the law on this point is quite clear, and that the judgment must be for the plaintiff.

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#### JUDGMENT No. 2.

*In the case of R. v. Serva and others for murder, the following was the judgment of Baron Alderson read at the meeting of Judges at Serjeants' Inn. Their opinions were delivered seriatim, but only the result of them all was, for political reasons,\* published in the reports.*

[This case will perhaps be better remembered as that of the 'Brazilian Pirates,' tried at Exeter, in the winter of 1845, before Mr. Baron Platt, and convicted of the murder of the crew of a British vessel by whom they had been boarded as slave-traders. They were afterwards respited on a question of law, which was carried to the Court of Criminal Appeal, and ultimately discharged.]

PIRACY, by the law of nations, is a felony committed on the high seas by a person whose general object is to commit felony against the subjects of all nations indiscriminately. Such a person, *hostis humani generis*, is by the common law of all nations (i.e., by a supposed municipal law of each) triable by any nations by whose subjects he is apprehended, and it is lawful for any of such subjects to apprehend him. But if two nations by compact *inter se* make an offence piracy which by the law of nations was not so before, they do something that is *ultra vires*. In such a compact, therefore, the word 'piracy' must be taken in a qualified sense, and the treaty must be taken to mean that each of the stipulating parties will make a

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\* The political reasons were that the majority of the Judges would have held the seizure unlawful, and the crime *not murder* for that reason. But it was preferred to put it on the ground that it was not triable here.

municipal law for the trial of such offenders as pirates, and that if such a law be made by both, or perhaps by either, the courts of the country making such municipal law may, in pursuance of it, try such offenders, being subjects of the other country, and the country to which the offenders belong is estopped by the treaty from complaining that its subjects are so punished. If the executive government of both contracting states have also the legislative power (*i.e.*, if they be despotic), it is possible that their merely agreeing to the treaty makes it a law for that purpose. But it is clearly otherwise where the monarchy is a limited one. Here the Queen has no such power. She may make a treaty, but the action of the Legislature is required before the municipal law stipulated for by that treaty is made. Here the compact by treaty is that slave-trading shall be piracy. We are at liberty, therefore, to pass an Act subjecting it to the same trial and penalties as piracy: when that Act is passed we can try Brazilians for it in our courts, and so alone can it be placed as to them in the same category as piracy by the law of nations. But here no such law has been passed; and till it is passed we cannot try Brazilians for slave-trading as pirates. The Parliament may refuse to trust such a power to our ordinary courts; they must do so if those courts are to try these offenders: they must define the course of procedure. Till they do this, no such offender can be tried here, and consequently cannot lawfully be apprehended that he may be tried. The seizure, therefore, of these persons cannot be justified on the ground that it was lawful to seize the *Felicidade* and her crew as pirates, in order that they might be tried, and so the ship, when seized, became *ipso facto* a British ship, and the murder triable here. But granting that this point fails to support the judgment, we have still to consider as a second point, whether, as the treaty also enables us to seize and detain, and in proper cases to condemn, Brazilian vessels if engaged in the slave-trade, this ship was not then also properly seized in conformity with the treaty; for if it was, it became during seizure a British ship, and so the murder was committed in England, and is triable here. It becomes, therefore, necessary to examine carefully the provisions of the treaty. It authorizes us, if special instructions of a particular nature are on board an English cruiser, and given to an officer of defined rank, to seize a Brazilian ship having slaves on board. This, I think, is the result of the provisions of the two treaties with Portugal and Brazil contained in the Acts 5 Geo. IV. and 7 & 8 Geo. IV., which have been referred to. These constitute together a special code of terms upon which Brazil permits her subjects and their vessels to be seized by us. Here the seizing vessel, the *Wasp*, was commanded by an officer of the proper rank. As to the instructions, none were given in evidence on the trial. But it is stated that there were 'instructions' on board the *Wasp*. That being so, we must either infer that these instructions were in conformity to the treaty, and commanded the officer to seize ships having slaves on board and no others; or, from the fact of no instructions being

produced, we must infer that the captain had no instructions at all on this point. The former inference would probably be the one which the Brazilians on board the *Felicidade* would draw. But on either supposition the capture and seizure was illegal, for the *Felicidade* had no slaves on board when she was seized. Then, inasmuch as it seems clear that this is so, does the seizure of a Brazilian ship made by an English officer illegally—being contrary to or without the instructions of his Government—change the national character of this vessel from Brazilian to English? Surely we ought to have some distinct authority for such a proposition: none has been produced. In the absence of such authority I must hold that a wrongful act is a void act, and leave the Brazilian character of this vessel unchanged. If this be so, then inasmuch as by the law of nations a Brazilian vessel on the high seas is a part of Brazil as much as any part of the continent of Brazil itself, it will necessarily follow that this murder, being committed by a Brazilian in Brazil, and not in England, must be tried there, and not in our courts here.

I do not say what might have been the case if the instructions, being given in evidence, had been shown to have *expressly* authorized this seizure, whether slaves were or were not on board the *Felicidade*. In that case the act of seizure would have been (although clearly unjustified by treaty yet) the act of the English Government, and might have amounted to a *hostile capture*, and so the ship captured might have been, till released, a British ship. In that case perhaps the murder might have been triable in our courts. But the facts do not raise that point.

This, therefore, is not piracy and murder committed on the high seas, and triable in England, nor murder of one British subject by another British subject; nor is it, lastly, a murder of a British subject by a foreigner in England, *i. e.*, in a ship which was English at the time when the murder was committed. It cannot, therefore, be tried in our courts at all. This trial was therefore illegal, and the judgment was erroneous.

(The prisoners were pardoned and discharged.)

## JUDGMENT No. 3.

KNIGHT (Clerk) v. MARQUESS OF WATERFORD.

From Young and Collier's Reports, vol. 4, p. 283.

*To a Rector's bill for an account and satisfaction of tithes, the defence was that the lands in the defendant's occupation comprised the Manor of F., which was in the Rectory of F., and that from time immemorial the owner for the time being of the Manor of F., had paid to the Rector of F. the yearly sum of 40l. for the maintenance of divine service there, for 'and in lieu of' and in contentation of all manner of tithes arising within the Manor; and that the owner for the time being of the said Manor, or his assigns, had from time immemorial in respect of the said yearly sum, used to have, and ought to have, the tenth of all titheable things arising within the said Manor.*

THIS case was argued before me at the last sittings in Serjeants' Inn Hall, at great length, and with distinguished ability and learning. And I have to express my thanks to the learned counsel who appeared on that occasion, for the great assistance which they have rendered to the Court.

The plaintiff, Mr. Knight, has filed his bill, claiming an account of tithes from the defendants. He is the rector of the parish of Ford. The defendants are occupiers of lands within the rectory; and they admit his title as rector, and their liability to the account, unless they are able to substantiate affirmatively in point of fact, and to support in point of law, the validity of the defence which they have put upon the record.

That defence may be thus stated: they say, first, that the manor of Ford is, and from time immemorial hath always been, situate within the parish of Ford. They then aver, that from time immemorial there has been payable by the owner of the manor of Ford for the time being, to the rector of Ford, the sum of 40l. annually, by two equal payments, at Lady-day and Michaelmas, in lieu of all tithes; and further, that from time immemorial, the owner for the time being of the manor of Ford, or his assigns, have been accustomed to have, and in respect of that sum of 40l. so paid to the rector, ought to have the tenth of all titheable things arising within the manor.

This prescription is the foundation of the defence, both of the Marquess of Waterford and his tenants, and of Mr. Askew and his tenants. The former set up the title to the tithes now claimed by the rector, as being in the Marquess as owner of the manor of Ford. The latter, as to part of their lands, set up a title to the tithes in Mr. Askew, derived by express conveyance from Sir John Hussey

Delaval, a former owner in fee-simple of the manor, executed in the year 1768, to Mr. Askew's ancestor ; and as to the residue, rely on the title of the Marquess of Waterford, with whom they say they have accounted for the tithes due. Both aver the immemorial and continuous payment of the 40*l.* down to the period when the present plaintiff refused to receive it, namely, in 1822.

The first point which was argued before me is, whether this prescription, as stated on the record, is valid in point of law. The authorities on this subject have all been brought before the Court. The prescription, indeed, is double : the first branch of it is, in fact, the assertion of an ordinary district modus in lieu of tithes ; and, if the evidence laid before the Court established that position, I apprehend that the addition of the other branch would not vitiate it. But the difficulty is, that all the facts of the case are inconsistent with this conclusion. A modus in lieu of tithes is inconsistent with the receipt of tithes in kind by any one. All the evidence on the part of the defendant, however, is calculated to shew, if it shews anything, that the lord of Ford immediately received the tithes, and that the rector did not—that he has sold the tithes and conveyed them—as the ancestor of the Marquess of Waterford did, to the ancestor of his co-defendant, Mr. Askew.

This defence, therefore, fails in fact ; and the question must arise and must be determined upon the compound prescription, including both branches ; for the evidence certainly supports nothing else.

The first question, then, arises, as to the validity in point of law of such a defence. No case certainly has, as yet, gone to this extent. The cases of *Pigot v. Heron*, *Pigot v. Sympson*, and *Phillips v. Prytherick*, which were cited, establish this proposition—that a layman may prescribe in a *que estate* to have tithes as appurtenant to a manor or to lands. And this, in the case of a manor, is stated in the books to depend upon the supposition, that before time of memory, the lord, being seised of the manor, may have, with the assent of the patron and ordinary, lawfully entered into a bargain with the parson, to pay to him a certain pension, and in lieu thereof to have the tithes of the land within the manor ; and that either by retainer he may himself enjoy, or by a prescriptive bargain with his tenants, he may take from them the tithes of their lands within the manor. The same supposition may be made in the case of the proprietor of land ; and so tithes may be lawfully appurtenant to a manor or to land. But no authority has been cited which goes any further, and which establishes that there has ever been allowed a prescription for the lord of the manor or the proprietor of land, and his assigns (meaning the persons to whom he may assign the tithes), to take the tithes from the terre-tenants. For the effect of this would be to make the right of taking the tithes assignable from one layman to another, and would make a layman capable of tithes in gross. I entertain, therefore, great doubts on this ground as to the validity, in point of law, of this prescription. But, independently

of this difficulty, which is a question of law, another point was made in the course of the argument, tending to the same result. It was suggested that a very great inconvenience might follow from such a prescription, if allowed. For the lord of the manor might alienate all the lay possessions of the manor; and then the parson, if the tithes also were assignable, might have nothing left out of which his pension could be secured. But inasmuch as the parson, patron, and ordinary had the absolute power in ancient times of disposing of the tithes, they had the right to make, and may have in fact made this bargain, however improvident such an arrangement must have been for the Church. And, therefore, I entertain some doubts whether, strictly speaking, that argument raises a difficulty in point of law. Thus a *modus* is said to be invalid if it be rank; but I conceive that the rankness of a *modus* is not, strictly speaking, an objection in point of law to it. If there could be produced the original deeds containing the agreements, made at the proper period, and executed by the proper parties, such a *modus* would be valid. But the truth is, that a Court of Equity, judging both of the fact and of the law, determines from the gross absurdity of the bargain that no such bargain was ever in fact made, and does not think it necessary to subject such questions to further investigation. And so such questions, being habitually determined by the Court, have come to be considered questions of law and not of fact, to which latter class, however, they more correctly speaking belong. Here, therefore, if the prescription set up involves circumstances which induce this Court to come to the conclusion that no such bargain could ever have been made, this Court may act on these circumstances, using them as *criteria* for its decision in point of fact alone.

And this it will be, perhaps, most judicious to do on the present occasion. I shall therefore not consider myself bound, by this latter difficulty, to hold that this is an illegal prescription, but shall allow that objection to have its weight in the course of the examination which it will be my duty to make as to the facts of the case. If the result of the whole should be, that the Court thinks the proper inference from all the facts is, that reasonable persons, acting on the one side and the other, have in fact made this arrangement before time of legal memory, then I propose to decree that the bill should be dismissed with costs, subject only to the plaintiff's privilege of having an issue in case he is advised to claim it. And, on the other hand, if the inference be that this is a mere usurpation, arising out of arrangements made at a comparatively modern period, the plaintiff will be entitled to an account, and to have the costs of this suit.

The defendants' case, therefore, must first be stated; and it depends, in the first place, mainly on certain uniform payments to the parson, which are traced back by receipts as far as the year 1690, the first receipt being of that date, and signed by George Chalmers, then rector of the parish, for half-a-year's payment, and stated to be for all manner of tithes. These receipts are produced in such numbers as to be, coupled with the evidence of payment from the



steward's book, very fairly considered as proving a sum of 40*l.* continuously paid from 1690 to the year 1822, at the time when the present dispute arose. They vary, indeed, in some important particulars, both as to the nature of the payment, the periods of payment, and the description of the district for which the payment is made. The payment is called a *modus* or *seisin*, and in some cases a rent. The times of payment are certainly not uniform. And the district is sometimes described as the estate of the person paying situate in the 'parish' of Ford, a description by no means unimportant, when the other circumstances of the case are looked at. In other receipts the district is called 'the lordship of Ford,' which accords better with the defendant's present pleadings. But no doubt much weight is due to this body of evidence; and I have on former occasions expressed, and still retain the opinion, that much of obscurity and somewhat of variation may fairly be expected to be found in cases like the present, where the evidence extends over a long period of time, without greatly detracting from the importance of the proofs.

In addition to this body of evidence, the defendant incidentally, by the depositions produced in the suits in equity, which have been laid before the Court, has shewn that a payment of 40*l.* per annum certainly existed at a period earlier than 1690.

The other branch of the defendants' prescription depends mainly on the proofs of the lord of Ford having dealt with the tithes—having sold them—having made them securities for money, and the like. These dealings, which are numerous, extend back to 1658; and are proved by the deeds coming from the custody of the defendants.

Then come the suits in equity, which may be considered as applicable to the two branches of the prescription taken together. The earliest of these suits is that instituted by Davidson against Blake in 1676; and certainly, no one in reading through that document alone, would have supposed that the prescription as now pleaded was then in existence. For Davidson having, in his bill, claimed tithes in kind as well as relief from the suit upon the resignation bond, Blake, in his first answer, claims merely a *modus decimandi* for his lands in the parish of Ford of 40*l.*, which he explains in his further answer as being a *modus* for the demesne lands of the manor of Ford.

The later suits, however, set up the present prescription in both its branches; and, indeed, in the same terms almost as it is now pleaded. But the evidence produced before the Court on those occasions, and the facts deposed to of very material variations in the amount paid, which are by no means satisfactorily explained, and the apparent collusion between the parties, do not, I think, entitle this part of the evidence to much, if to any weight, in favour of the defendants. On the contrary, it has appeared to me, on examining it as carefully as I can, to throw considerable light on the plaintiff's case.

The plaintiff's counsel make several points in answer to the defendant's case.

First, they say, that, from a series of ancient documents, they can shew that this payment of 40*l.* could never have existed at so early a period as the reign of Richard the First.

It is very difficult to determine cases on conclusions drawn from such sources. These documents certainly show, that the value of the living, during the time of the wars of the Border, was reduced to almost nothing. But some of them also shew, that at an earlier period it was much larger—sufficiently large indeed to have included this payment of 40*l.* as a portion of it. And all that we can, I think, fairly infer from the later documents is, that it is somewhat more probable that the whole value was of a fluctuating description, likely therefore entirely to be affected and wasted by the ravages of Border wars, rather than that it consisted of a fixed salary as to part, and a fluctuating profit as to the residue. On the other hand, if the fixed salary were payable by the lord, and his whole property, as well as the residue of the tithes, were wasted and destroyed by the same wars, it might perhaps be considered that the lord might be unable to pay, and that *his inability to pay the fixed portion* might fairly account for the description of the rector's whole income as destroyed and wasted by the hostile incursions. Much weight, therefore, cannot be given to these documents.

The next point made is, that the manor of Ford did not originally include the manor of Heatherslaw; and to shew this, a variety of ancient documents have been laid before the Court. It is not my intention to examine these in detail. I think the result of the whole is, that the manors were originally separate, and that they did not unite under the same lord till the 6 Henry VI., a period long after legal memory. But this alone does not entitle the plaintiff to my judgment, except as to the lands of Heatherslaw.

The prescription is for the manor of Ford; and though Heatherslaw is not a part of it, it may still be good for that which is included within Ford itself.

But, in one point of view, the separation of Heatherslaw from Ford is a circumstance of which the plaintiff is entitled to avail himself. Some of the receipts put in by the defendants speak of the 40*l.* as paid for the *estate* of the person paying it *in the parish of Ford*; and the original answer of Blake, in the first suit, claims the modus for *all his lands in the parish of Ford*. Now we find that Catford Law, which is in the lordship of Ford, has paid tithes; and this has been done, it may be fairly said, looking at some of the evidence in the suits in Equity, ever since Catford Law ceased to be part of the estate of the ancestors of the Marquess of Waterford. And again, it appears that Heatherslaw, which was not part of the lordship of Ford, and not originally in the possession of the owners of Ford lordship, did, under the 40*l.* claim, and at some period when it was in their possession, obtain exemption from tithes; and the same may be also said of other portions of land since included

in the same estate. These facts, coupled with the wording of the receipts, and of the original answer, look as if the 40*l.* was really paid as a compensation for the tithes of the estate of the person paying it, howsoever circumstanced, if within the parish of Ford, and would seem to point to a lease from time to time granted and continually renewed, at the same rent, by the rectors to the owners of the tithes of their estate for the time being, as the origin of the whole.

Certainly, the payment of tithes for Catford Law is a very strong fact for the plaintiff. It may be said that the lord of Ford had no power over the proprietor of Catford Law after he sold him the land and the tithes. It is not entirely clear to me that he did sell to him the tithes; and if he did not, he had the right to take these tithes himself, supposing this prescription well founded. But, supposing that he did, by the deeds he executed, pass the tithes from himself to the owner of Catford Law, it is a very strong fact against his having that right, that a person in 1658, well acquainted with all the facts as they really existed, to whom the tithes had been conveyed, should, from that time, have surrendered so valuable a right, and yielded these tithes to the usurping rector. Such a thing is highly improbable; and when I find that this person who yielded had no power over the rector, and that the person who resisted was the patron holding the rector under bond of resignation—a state of things uniformly kept up almost to the present time—I own the fact of the continued payment of tithes for Catford Law seems to me a very strong fact in favour of the plaintiff's right. We must add to this fact the variations in the amount of the payment proved in the course of the suits, and which occurred almost at the same period of time when this separation took place. The clergyman appointed during the usurpation, not being under the control of the patron, received 60*l.* and not 40*l.* Indeed, it seems as if the moment the power of the patron ceased to have weight, that the 40*l.* is either varied, or tithes in kind claimed and paid. There are also other objections to the defendants' claim. It includes all tithes, and in truth, the defendants' documents speak of all tithes. Yet it is clear, that the rector has received some kind of tithes of small amount in the lordship of Ford, and even from that part of it which belongs to the defendants.

I shall make few observations on the document disclosed by the Bill of Discovery. They shew an apprehension of the weakness of the defendants' title entertained at the time, and a great readiness on the part of the clergymen presented to give up the right of the Church without due inquiry. They exhibit the evils of lay patronage, especially where the proprietor of the lands subject to the tithes is the patron; and, *pro tanto*, they diminish the value of the series of receipts signed by the clergymen so conducting themselves. But, in general, I think, we are apt to place too great reliance on apparent manœuvring, and to consider that to be actually fraudulent, which perhaps may have been only an indirect proceeding of a

weak person in order to improve a case which he thought not sufficiently clear before.

Upon the whole, however, considering all the facts of this case, and reverting to the observation before made, that the prescription itself set up is of a very improbable nature, and therefore requiring very clear proof, I have come to the conclusion, that the defendants have not made out satisfactorily such a prescription in point of fact.

If I saw that any further advantage could be obtained by the oral examination of witnesses, I would direct an issue to determine these points. But the question depends on documents almost entirely. There is indeed no disputed fact raised by the depositions of the witnesses; and it would, I think, be absurd to send to a Judge and jury at *Nisi Prius*, to determine off-hand a mere question of fact, which depends on a careful investigation of documents which I have myself reviewed, and which have required a long lapse of time for me to read over and carefully weigh.

The defendants made, however, one other point, to which I shall shortly advert. They contended that the plaintiff's right was barred by the fine which has been levied. But I think it was not. These tithes remain spiritual, according to the view I take of the facts of this case. They have been always received under what must be considered, in the opinion of the Court, to have really and legally been a composition of 40*l.* for them. If this view of the facts of the case be correct, the fine can have no operation: and if the opposite view be correct, it is not material to consider the question; for the foundation of the decree will fail.

Upon the whole, I have arrived at the conclusion, that I ought to decree for the plaintiff an account of the tithes due and the costs of the suit.

Decree accordingly.

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\* This decree was reversed in the House of Lords by Lord Cottenham, on the ground that it was imperative to send it to law for determination. But Lord Ellesmere, in the time of James I., was more liberal. In *Tomley v. Clinch*, Cary's Reports, p. 23, he refused in a suit between Mulier puisne and Bastard Eigne to send it to law, and gave this reason—that it was a thing long past, and rested not properly in notice de pais, but was to be discerned by books and deeds, of which the Court was better able to judge than a jury of ploughmen. In this case the result was, that being sent to law, there were two trials. On the first the defendant succeeded, on the ground that the plaintiff was barred by the Statute of Limitations. On motion a new trial was granted; and on the second trial, and after a delay of four years, the Judge at *Nisi Prius* read my judgment to the jury, who adopted it!!! It was, after all, compromised.

E. H. A.

## APPENDIX II.

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*Report of MR. ALDERSON's Speech, in his Summing up on the East Retford Disfranchisement Bill, Monday, 12th July, 1830.*

MY LORDS,—Whether my learned friend calls witnesses or not, is a matter of his discretion: I have no doubt he has exercised a sound one, and that he gives up Mr. Hornby upon very substantial reasons. No doubt no man with the sense of my learned friend, or with any fraction of his intelligence, can doubt what your Lordships' opinion must be with respect to that individual. But without further adverting to the conduct, or the character, or the evidence of that witness at present, I will proceed to sum up the case on behalf of the petitioners. This is a case, my Lords, which, though it has occupied a considerable portion of your Lordships' time, is really a very short one, depending on a very few points, and which must be determined without the slightest difficulty by your Lordships, the moment you have established the principles upon which the decision shall proceed. I will venture to affirm, that a case more clear upon the evidence—if we are but right as to the principles—never was presented at your Lordships' bar; and therefore I apprehend that, in discussing it, the only important point for me to consider will be, what are the principles upon which this case must depend. For if I succeed in establishing those to your Lordships' satisfaction, it will be a task without the slightest difficulty afterwards to apply the evidence which has been given before your Lordships to those principles.

My Lords, unquestionably this is a case of very great importance to the public at large. It is also one of very great importance to the persons for whom I appear, being no less than a Bill to take away from these persons rights which they have possessed for a great many centuries; and that upon evidence upon which I venture to say, your Lordships would not take away from the meanest subject in this realm any the slightest right. Indeed, it is one of the most absurd parts of this case that my learned friend is applying to your Lordships to take away the rights of a whole borough upon evidence which would not be sufficient, if believed, to authorize the taking away the elective franchise of any one of the individual members of it. That is one of the gross absurdities of this case.

My Lords, I apprehend that no one now can dispute that the elective franchise is a right of property. Nay, more, that it is not merely a right of property, but that it is a right of property of the most valuable description. I know that it has been said by some to be a dry trust, but that, surely, is a doctrine now altogether exploded by all persons who have considered the subject attentively. How that can be considered a dry trust, when the deprivation of it is considered as the deprivation of a valuable right, in the loss of which a party is entitled to damages, I need only to refer to the important case of *Ashby v. White*, which agitated both Houses of Parliament, which was discussed in both of them with great earnestness, and with great learning, which agitated the Courts of Westminster Hall for a long period, which was decided by the most eminent lawyers in favour of the right, which decision has remained unimpeached to this day. My Lords, this decision has been acted upon in the course of the recollection of us all in repeated instances. I allude to the actions brought against the High Bailiff of Westminster in respect of the denial of the right of voting in that city, before the present learned Lord Chief Justice of the King's Bench. No one ever of late years has thought of disputing that the right of voting was a valuable franchise in the nature of a right of property. But if this be a right of property, and that of the most valuable description, can it be less to be regarded because it affects a large body of individuals, than if it belonged only to one. If your Lordships would not take it away from any one of the electors of East Retford, and if when any one else attempted to take it away your Lordships would protect them in defending their interests, and would permit them to bring an action to recover damages, will your Lordships, I ask, by a legislative enactment, proceed to take it away yourselves from the whole body? I say that your Lordships will do no such thing, unless you see some grave case made out upon satisfactory evidence by which such a proceeding can be justified.

This brings me to consider what are the principles upon which your Lordships have held yourselves at liberty to take away so valuable a right. They proceed upon the ground that that valuable right has been forfeited. Upon what can a forfeiture depend? Upon misconduct. And how is misconduct to be proved, except by legal and distinct evidence? It follows, therefore, if this be a right of property, that your Lordships must act upon it as a case of forfeiture, and if so, your Lordships will look to the decisions of your predecessors upon this subject, to see what they considered to be the grounds upon which such a forfeiture is to depend, and what is the species of evidence by which that forfeiture is to be supported.

If, indeed, I were here to presume to discuss the general question of Parliamentary Reform, I am sure your Lordships would immediately tell me that I was out of my place, and not performing my duty. Your Lordships do not call counsel here to the bar to discuss questions of that description. If your Lordships' decision is to be

influenced by general considerations of political expediency ; if you are to sacrifice this borough as a sort of scapegoat for the purpose of quieting certain insurgent troublesome persons, in order that they may not complain of your Lordships being inattentive to the complaints of the people as to reform, we have undoubtedly no right to be here. But I conceive that your Lordships, by hearing us, have given us a pledge that those are not the principles upon which this is to be decided. It is not to be decided upon political expediency, and I should therefore not only waste your Lordships' time if I adverted to such questions ; but I should do more—I should be forfeiting that respect which I owe to your Lordships' House, if I were to attempt to discuss them. For the very presence of counsel at the bar affords a pledge that your Lordships do not intend such points to be discussed at all.

My Lords, we are here to examine witnesses, and to discuss this case upon the evidence. We are not to have conjecture substituted for testimony. We are not to have misconduct, first supposed to exist, and then to be called upon to negative its existence. We are not to have issue turned against us, and to be called upon to prove that corruption does not exist, instead of my learned friend's being called upon to prove that it does exist. If your Lordships could think that it is just for the case so to be conducted, then, indeed, the petitioners have but little chance at your Lordships' bar. For then your Lordships would, at the very beginning of the investigation, forfeit that character for justice which has hitherto distinguished, and which, I am sure, will always distinguish, the decisions of this House. My Lords, you are to decide this case upon evidence, not upon conjecture ; upon testimony, not upon prejudice ; you are not to rely upon ingenious hypotheses, and to call upon us to give evidence, in order to contradict them, instead of having the evidence given in the first place, upon which these hypotheses ought to be originally founded.

My Lords, I complain grievously of the manner in which this case has been presented to your Lordships, and the manner in which your Lordships' minds have been sought to be prejudiced by my learned friend's beginning at the wrong end of the case. My Lords, what was the manner in which it should have been conducted ? If my learned friend had had a good case to submit to you, he would have begun with the last election. We entreated your Lordships so to order this case to be conducted, but you thought it was to be left to the discretion of those who conducted this case to begin at which end they pleased, and undoubtedly that is the ordinary course ; but this was an extraordinary case. If your Lordships have complained, as well you might, of the length to which this investigation has been drawn out ; if your Lordships have complained, as well you might, of the number of witnesses who have been called, and the apparent tediousness of the investigation, it is all in truth to be attributed to this original fault.

For the point to which the investigation, although tedious, was

directed was very material ; and if we had not gone through every individual instance, as my learned friend called the witnesses, we should not now have had the triumphant case we have at your Lordships' bar.

It was important, in our view of the case, to show that corruption and bribery were very distinguishable things. It was a point with my learned friend to make them the same, and we therefore were obliged, when he called his witnesses, to ask those questions from each ; for it would have been said, if we had not gone into each case, that though there had been an investigation to negative bribery in some individual cases, of one or two persons, that the greater number of instances into which we had not inquired were cases of actual bribery and not of corruption.

But, my Lords, if this case had been conducted as it ought to have been, by beginning at the last election, the case would have been much shorter. We should have begun by founding your Lordships' jurisdiction upon the transactions at the last election, and then might have given in evidence the circumstances of the former elections by way of aggravation. All the decisions which have taken place in this House upon this subject are, on this point, uniform. There has been no case yet (whether this is to be an exception I know not) in which the essential point in dispute between the parties has not been whether there has been bribery at the last election. Unless your Lordships can establish that, the jurisdiction of your Lordships upon this case, if I may so speak, is not founded—I do not mean to deny the power ; but I say, in the exercise of the power, your Lordships have never permitted any case to succeed and to proceed to a law where that fact has not been made out. I therefore say, that this case should have been begun by proving bribery at the last election ; and if my learned friend had attempted that in the course of the examination of the first two or three witnesses, it would have appeared that he had no case whatever. Then, my Lords, the case would have been over. It would have been over conformably to justice and the ordinary rules of proceeding. The case, as to the last election, would have stood upon its own naked merits, and would have been no case at all. But this would not do. My learned friend knew he had no case supported by credible and legal evidence as to the last election ; but having legal evidence of an improper receipt of money upon former elections, my learned friend thought that if he could excite a sufficient quantity of prejudice in your Lordships' minds by that testimony, he might then persuade your Lordships more readily to believe his weak and incredible case as to the last election, or rather that it might pass over almost without any evidence at all, under the impression which he had raised in your Lordships' minds by the rest of his case. But I am sure your Lordships will not permit this, and that whether this case be begun at the beginning, or at the middle, or at the end, you will look at the evidence, and see whether there be any distinct testimony of bribery at the last election. If there be no legal



evidence of guilt (and I should be asbamed to argue before your Lordships as to any distinction between want of legal proof and innocence, having heard one of your Lordships, with great satisfaction, state that he should consider those as innocent who were not proved to be guilty), I call upon your Lordships to come to the conclusion that it would be great injustice to take away the rights of these parties which they have so long enjoyed.

My Lords, questions of this description have come before Parliament upon four different occasions. The first of these was the case of Shoreham, which was followed by the case of Cricklade, which was again followed by the case of Aylesbury, which was consummated by the case of Grampound. In these the bills were passed. There has also been the case of Penryn since, in which the parties failed. Now I will read to your Lordships what the case of Shoreham was from the best authority I can find—I mean the *Parliamentary History* itself; there your Lordships will see what was the nature of that case. I read it from the 16th volume of the *Parliamentary History*, page 1346: ‘A remarkable scene of corruption was at this time brought to light by the Select Committee appointed to determine a contested election for the Borough of New Shoreham in the county of Sussex. The matter of contest was that the returning officer for that borough had returned a candidate with only thirty-seven votes, in prejudice to another who had eighty-seven, of which he had queried seventy-six, and made his return without examining the validity of the votes he had so queried. It appeared, from the defence made by the officer, that a majority of the freemen of that borough had formed themselves into a society under the name of the ‘Christian Club,’ the apparent ends of which institution were to promote acts of charity and benevolence, and to answer such other purposes as were suitable to the import of its name. Under the sanction of piety and religion, and the cover of occasional acts of charity, they profaned that sacred name by making it a stale for carrying on the worst purposes, of making a traffic of their oaths and consciences, and setting their borough to sale to the highest bidder, while the rest of the freemen were deprived of every legal benefit from their votes. The members of this society were bound to secrecy and to each other by oaths, writings, bonds with large penalties, and all the ties that could strengthen their compact, and carried on this traffic by the means of a select committee, who, under pretence of scruples of conscience, never appeared or voted at any election themselves, but having notwithstanding sold the borough and received the stipulated price, they gave directions to the rest how to vote, and by this complicated evasion the employers and their agents, having fully satisfied their consciences, shared the money as soon as the election was over without any further scruple. The returning officer had belonged to this society, and, having taken some disgust to his associates, had quitted their party; the majority of legal voters which he objected to, was, he said, in part owing to his experimental knowledge of their corruption, and partly founded

upon several improper acts that had come within his knowledge as a magistrate upon the late election.'

Therefore, my Lords, this was a case of allegations being proved by the oath of the returning officer and by other persons at the bar of the House of Commons. In this case, therefore, of the Borough of Shoreham there was a club which had been established for many years; it was a club which was conducted by a committee; it was a club the members of which bound themselves by oaths and by bonds to do whatever the committee thought it was incumbent upon them to do. The committee made a previous bargain: they received the money from the candidate: the candidate having paid the money, and the committee having received it, the committee gave directions to the subject persons of the club, and they voted according to the decisions and orders of the committee. Why, my Lords, can any man doubt that that was a plain case of gross bribery, aggravated by conspiracy, and that the persons, every one of whom voted under those circumstances, were guilty of bribery, in the ordinary sense of the word 'bribery,' too, at the last election, because it was upon the last election that the event took place which brought the whole to light. A case of a more aggravated description than the case of Shoreham can hardly be found, involving everything that could make it bad, involving a majority of the freemen of the borough, involving the last election, involving bribery, and involving a conspiracy which had been carried on for a long series of years. So notorious, indeed, was it, that the case was introduced upon the public theatres of the country, having been one of the incidents in Mr. Foote's farce of 'The Nabob,' where the Christian Club proposed to elect the black servant of Sir Matthew Mite. It was therefore as notorious as it was disgusting; and surely if Parliament had not interfered in such a case, it would have been fairly said that bribery might have stalked through the whole land with impunity.

The next case was Cricklade, where there was also a majority of electors bribed, and that, too, at the last election. There, too, there were actual convictions for bribery, and the corrupt conduct had been continued for a long period of years. In the case of Aylesbury, in like manner, there was bribery at the last election—bribery of the majority—bribery of long continuance; and though there was no club, there was a regular list of voters, who were all bound by a common tie to vote according to the decision of a particular number of persons. In the case of Grampound (which I had the honour of conducting before your Lordships, my learned friend, Mr. Adam, being on the other side) we began by laying upon your Lordships' table a variety of actual convictions for bribery at the last election. We showed that in the three or four previous elections the majority of voters had, upon every successive election, been bribed; and we showed actual bribery existing at the last election, and existing also during previous elections, and that of the majority of legal voters.

My Lords, the case of Penryn confirms, by its decision, the principles I have deduced from these four cases. It confirms them by

deciding, that when one or other of these ingredients did not appear, your Lordships would come to an opposite conclusion. But in Penryn there was actual bribery at the last election, though it was not of the majority of legal voters. Indeed, there has been no case till the present in which the preamble of the bill itself did not state a case of corruption or bribery at the last election.

Now, these are the principles which, according to the precedents, your Lordships have sanctioned by your authority. Permit me now, very humbly, to suggest to your Lordships that these principles are not only founded upon authority, but they are founded upon the plainest grounds of justice and of good sense. If they were now to be established, I should have no doubt of succeeding, before your Lordships, in convincing you that they ought to be laid down—how much more, then, when I have the advantage of knowing that they have been laid down by successive decisions of this House, by persons of the highest authority and of the most enlightened understandings.

In the first place, then, I am to show, my Lords, why it should be legal bribery, and not mere vague corruption. I answer, first, who knows what is corruption?—Do your Lordships know what it is?—Can your Lordships tell me what corruption is; how it is to be defined; and where that which is corruption becomes a legitimate influence? If I were asked the question—if any one were to come to consult me upon the subject, and were to say—pray what may I do which any given tribunal will not consider to be punishable corruption?—I should say, I must first know who are the persons who are to decide upon it: because if I were to take twelve persons who are red-hot parliamentary reformers, I should know that almost anything, the lifting up of a finger upon the occasion, would be considered by them as corruption; or if I were to take twelve persons who had all their lives trafficked in rotten boroughs, then I should expect that if I was to prove that something had been done which was, to almost any extent, morally wrong, but yet was not within the letter of the law, it would not be considered by them as corruption. But if I were to be asked, what may a person do so that he shall not be liable to the penalties of bribery for it, I should look to the law of the land, and easily answer the question. If you depart from the law of the land, your Lordships will be involved in difficulties of which you cannot anticipate the result. No one will ever know his rights, they will be perpetually varying according to the varying circumstances and opinions of the times. No one will know when he is safe. No one will know when he is to be called upon to be punished, for he will never know whether he has committed an offence. It is impossible, unless your Lordships confine yourselves to the known law of the land, that there can be any limit at all. The most legitimate influence will in some people's opinion be considered as corruption; for example, giving a place. Why is a place to differ from money? It is money's worth. It is always much larger in amount than anything which these poor

voters of East Retford have ever received. If all these voters of East Retford under the influence of the Treasury had received places from the patronage of the Crown ; if they had received places of excisemen, or if they had received livings, or if they had received anything of that sort after the election, your Lordships would not think, surely, that that was corruption : and yet, where are you to stop ? There are very many people in this country who consider such gifts as corruption, and who would consider those circumstances quite sufficient to disfranchise the borough. Besides, your Lordships in departing from the known law of the land, and punishing by disfranchisement on such grounds, are, in truth, making *ex post facto* laws. A party who is acting conformably to that which he believes to be the law of the land, who has received that which he believes he might lawfully receive, is called upon, ten or twelve years after the thing happened, to account for his conduct in doing that which, if he had known it was illegal, he would perhaps never have done. Surely this is unjust. The voters here have done that which, by the law of the land, they had a right to do ; and, though your Lordships may consider them as acting improperly, yet it is clear they could not know that they were committing any act of illegality in receiving the sums of money which were given to them. I say, therefore, that if your Lordships pass this Bill, you would disfranchise these people for doing that which they thought they had a right to do, and which there is no law at present existing in the statute-book to prevent their doing, and yet your Lordships are to visit these people with the severest penalty that can be imposed upon them, namely, the disfranchisement of their borough, and the destruction of the rights they have hitherto possessed. Suppose, I grant, that they have done that which your Lordships as gentlemen and men of honour would not do, but which these uneducated people thought they had a right to do, not being restrained by any motives of mere delicacy,—are they to be disfranchised for that ? It is clear that they were not liable to any penalty known to the law for doing upon this occasion what they have done.

My Lords, if people are to be disfranchised for doing shabby actions, where are we to stop ? What borough will be safe ? That is all these people have done ; they have not committed bribery, but they have received money in a shabby way. My Lords, if all the persons who receive money in a shabby way were disfranchised, I should like to know how many freemen would be left in the boroughs in this country. Your lordships hitherto have gone by strict and plain rules. Hitherto you have said we will decide on the same principles which would govern us if we were about to disfranchise an individual. Your Lordships have said that a borough shall be disfranchised in cases where an individual would be disfranchised. When would an individual have been disfranchised ? By committing bribery. Suppose my learned friend had endeavoured to prove this case against any one of those persons whom he has called.

Suppose any one of these persons had been called to the bar of any lawful tribunal in the kingdom of England, and had admitted the facts which have been stated in the examinations before your Lordships. It would have been preposterous. There is no court of justice in England that would not have laughed the person out of court who should have ventured to contend that this, although it may be an improper practice, is one to which the law has annexed any punishment. Then if that be so, if A. and B. and C. and D., being charged with this supposed offence, would have been dismissed upon the ground that they had committed no act which could render them liable to disfranchisement, will your Lordships call the whole borough before you, and disfranchise them for the acts of A. B. C. and D., which would not have disfranchised A. B. C. and D. themselves? It would be monstrous so to do. But, my Lords, my case is still stronger. It does not follow that, even if you would disfranchise an individual, therefore you would disfranchise a borough. Hitherto the great lawyers who have adorned this House have said the innocent shall not suffer for the guilty; but your Lordships are now called upon to make the innocent suffer where there are no guilty. If some had been guilty of bribery, the greatest lawyers have said if there be ten innocent and ten guilty, the ten innocent shall not suffer for the ten guilty: but here there are not ten guilty of bribery, and yet your Lordships are going to make the ten innocent suffer, by taking away the franchise from the innocent, though no legal guilt is proved at all. That, indeed, would be accumulated injustice. I say, therefore, that if this were a new case, your Lordships would not pass this Bill unless you were satisfied that legal bribery existed. But, further, when your Lordships upon all former occasions have required legal bribery to be proved, when in Shoreham bribery was proved; when in Cricklade bribery was proved; when in Aylesbury bribery was proved; when in Grampound bribery was proved;—is not my case conclusive on this point? If your Lordships were to rule otherwise, monstrous injustice would be done. In every one of the former cases, your Lordships' predecessors did not do such injustice. Will you do it upon the present occasion?

The next point is, that the bribery must extend to the majority of legal voters. Now I apprehend that the principle which has been laid down in this house by a noble and learned lord is founded, as indeed might naturally be expected from him, upon the plainest principles of justice and good sense. Lord Mansfield and Lord Thurlow, and the great lawyers of that day, laid it down that in their judgment no innocent man should suffer for the guilt of another. A very sound and good principle no doubt. They therefore thought that if bribery were proved, and that too against the majority of voters of any borough, the utmost extent to which by a Bill of this kind your Lordships ought to go, was to disfranchise the persons proved to have been guilty of bribery, and to leave the borough in the possession of those who were pure. Where, however, a ma-

majority of legal voters have been proved to have been guilty of bribery, your Lordships may reasonably, I conceive, adopt a different rule. Those eminent persons proceeded upon the supposition that every voter was a mere individual, and therefore that the punishment of one individual ought not to redound to the inconvenience of another: which is a perfectly sound and true principle. If indeed the right of voting be an individual right, and an individual right only, that argument cannot be got over. It would go the length, as Lord Mansfield puts it in the case of *Cricklade*, of proving, that if one individual voter was left pure in the borough, the borough ought to be left in the possession of that one individual voter; and that it would be the same as if a borough containing many voters were reduced by the act of God to the condition of *Gatton* or *Old Sarum*, and would not be liable to be disfranchised, unless it should be held expedient that a general Act of Parliament should be passed for disfranchising all small boroughs.

But, my Lords, I apprehend that the right of voting is not to be considered as merely an individual right, and upon that subject I would call your attention to the language of Lord Holt, and the principles he laid down in the case of *Ashby v. White*, which appear to me to show the true way of solving the difficulty in question. He says, *Howell's State Trials*, vol. xiv., p. 782, 'The other right of choosing parliament burgesses is not annexed to any freehold or estate in possession, but vested in the freemen of the place, and is created in this manner: viz., when a town was incorporated, a grant was either then or after made to the body politic, that they shall have two burgesses for the parliament to be chosen either by all the freemen and inhabitants of the place, or such a selected number as is prescribed by the charter. The inheritance of this privilege' (this is the part to which I call your Lordships' attention) 'is in the whole corporation aggregate, but the benefit, possession, and exercise is in the persons of those, who by the constitution of those charters are appointed to elect.' It appears, therefore, from this passage, that the inheritance of the privilege of voting is in the whole corporation aggregate, although the benefit, exercise, and possession of it is in individuals. If, then, the inheritance is in the whole corporation aggregate, it follows that the whole corporation aggregate may forfeit it. Now, how can the corporation forfeit the right? I answer, upon the same principles that individuals forfeit it, viz., by corrupt acts on the part of the corporation in the one instance, and of the individuals in the other. If, therefore, there be a corrupt act on the part of the corporation, they may fairly forfeit, where the same corrupt act on the part of an individual would be followed by an individual forfeiture. Now, an individual would forfeit for an act of bribery. If, therefore, the corporation, so to speak, are bribed, the corporation may forfeit their franchise. But how does the corporation act? By its majority. It follows, therefore, that in order to create a forfeiture by the corporation,

there must be a corporate act done by a majority of the corporation; and therefore I say that it is clear upon the plainest principles, that a corporation is to forfeit by the corrupt act of its majority. Your Lordships also, upon former occasions, have proceeded upon this principle, and have decided that where there is a corrupt act of bribery by the majority of the corporation, there the right of voting may be forfeited, and the parliament ought to interfere. The whole, therefore, thus considered becomes perfectly plain, and founded upon the ordinary principles of law. The whole law is consistent in this view of it. When bribery is proved against an individual, by the law of the land he is disfranchised, and so, in like manner, when it is proved against a corporation; in that case it is liable to the same consequences.

My Lords, this point seems to have been adverted to by Lord Mansfield in the Cricklade case, for he took a distinction founded on it. The right of voting at Cricklade was not a corporate right of voting. It was a freehold right of voting. Prior to the Act of Parliament, any one who had a freehold to any amount had the right of voting. Lord Mansfield distinguished the case on that account from Shoreham. But the House of Lords considered that it was no solid distinction. They held that it fell within the equity of the rule, and that the people of Cricklade were a quasi corporation for that purpose; in the same manner, as your Lordships know, that townships and parishes are considered as quasi corporations for the purpose of prescriptions as to the repair of their roads, and the like. The case, therefore, depends upon there being a corporate act of bribery committed by the majority of voters; and I apprehend that it must be a corporate act of bribery, that is to say, an act done by the majority of the corporation at the time; and your Lordships will find that that also is not immaterial, when you come to investigate the evidence in this case.

The first two points, then, are, that there must be a case of actual bribery, and that there must be a bribery of the majority. The third point is, that there must be bribery committed at the last election. The reason of that is this: the body of electors is a fluctuating body, it is perpetually changing. Your Lordships know, that in the Universities particularly, and in most other elective bodies, in the course of a few years the whole constituent body is changed; and therefore if your Lordships were not to require that the last election should be the guide, you might, for aught you know, be visiting in truth and in literal effect, the sins of the fathers upon the children to the third and fourth generation. My learned friend has upon this occasion endeavoured to disfranchise this borough by proving that some of these persons received election money five or six-and-thirty years ago. So that there is to be no limitation upon this subject. But your Lordships will adopt no such rule, I feel assured, but will follow that which with justice your Lordships have hitherto proceeded upon, viz., that there shall be bribery of a majority of voters, and at the last election. When these three points

shall have been established, then your Lordships' jurisdiction, if I may so say, is founded. Your Lordships, then, will allow yourselves to exercise a discretion to proceed. That discretion hitherto has been exercised only where there has been the addition of one other circumstance, namely, that the bribery shall appear to be of long-continued standing in the borough. It must be proved, therefore, to have existed upon former occasions as well as at the last election, because, although your Lordships have a jurisdiction by the first three circumstances coinciding, yet your Lordships have not hitherto exercised that jurisdiction without the fourth. These, then, are the principles upon which I propose to consider this case. If my learned friends can make out that there has been bribery at the last election—if they can establish that it has been extended to the majority of the voters—if they can show that it has been for a long period of time prior to the last election, as well as at the last election—then they will have made out a similar case to those in which your Lordships have passed bills of this description; and I therefore now proceed to examine the evidence in this case, to see whether they have failed, or whether they have succeeded in these points.

Now, my Lords, when I look at the evidence in the case, I am quite at a loss to see upon what it is, if I am right in my principles, that my learned friend can depend at all. I say, if the principles are established, they are out of court. To begin: Is there any case of bribery at all? My Lords, they have called before you a great number of persons who have successively stated to your Lordships, that in one or two years after the elections of 1812, 1818, and 1820, certain packets, very improperly, were received, apparently in a surreptitious manner, by persons who did not know from whom they received them, but who obviously appear to have taken care that they were not to be acquainted with the persons who distributed them. All this I admit; for I am not willing to understate the case of my learned friend: but I add, that every one of those persons who have been called successively to admit their misconduct at your Lordships' bar, have uniformly negatived any previous agreement, any previous promise, any previous bargain, direct or indirect, that the condition of their voting should be the receiving of that money at a subsequent period. Now my learned friend will say, your Lordships will not believe these witnesses. Be it so. It is perfectly indifferent to me whether your Lordships believe them or not. This I know, that if they are not believed, your Lordships have no evidence at all: and if they are believed, my learned friend has no case. Now, my learned friend may take his choice of the horns of that dilemma. Either he may remove the whole of that evidence from your Lordships' notes; or he may give the whole of that evidence its full effect. If he does the one, your Lordships have no evidence; if he does the other, my learned friend has no case.

There is a third alternative (if I may use such an expression) which my learned friend, no doubt, would wish your Lordships to take, but which, I am quite sure, in addressing your Lordships—



the last tribunal in judicial matters—your Lordships will not adopt an alternative which, I should hope, would not be adopted even by the lowest court of the realm—which is that of believing the contrary of what the witnesses say. I know it is the common way in which many half-educated people judge of such things; but persons who are accustomed to judicial investigations will form a very different conclusion. If my learned friend indeed had made a *primâ facie* case, and it had been necessary for us to contradict the whole or any part of it, or for him to confirm the whole or any part of it, my learned friend would have had something to say; because he would have said this: ‘You may believe as much of this evidence as you please; and you may disbelieve as much of this evidence as you please.’ But I say the difficulty here is this, that if you disbelieve the evidence there is absolutely nothing remaining; for my learned friend has not produced the other *primâ facie* evidence. In truth, if you thus contradict your own witness, you must remove the whole of that witness’s testimony from the case: for here, the nature of the case is such, that you must say that the witness is utterly unworthy of credit, unless you believe his story. Therefore your Lordships must say, either that these witnesses are speaking true, or are not worthy of any credit at all. If the latter, then there is no evidence whatever of their having received the money; for that evidence is accompanied by evidence that they received it without any prior promise, direct or indirect. Therefore, if your Lordships disbelieve the one, you must disbelieve both; and then my learned friend has no case at all.

But really are your Lordships prepared to disbelieve these persons? This brings me to the consideration of the extraordinary manner in which this case has been pressed upon your Lordships—the extraordinary nature of the evidence which has been received—the bill of indemnity under which the evidence has been given—and the manner in which persons have been called to the bar of your Lordships’ House, and compelled to disclose circumstances utterly discreditable to themselves. My Lords, I have had the pain of seeing a gentleman of fortune and station called to your Lordships’ bar, and compelled to disclose what happened ten or twelve years ago—compelled to disclose the whole of his papers—to divulge all the secrets committed to his honour and integrity, and to declare all those facts and circumstances which my learned friend, in the exercise of his discretion, thought material to be used upon the present occasion. A more painful, and give me leave to add, a more dangerous precedent has scarcely ever been made. Do we not know that it is commonly said in this country of England, that persons sell seats and boroughs? Whether this is said truly or falsely, it is not material to consider. Are your Lordships prepared to expect to see gentlemen of fortune (not, indeed, members of your Lordships’ House, because you are privileged), but are you prepared to see gentlemen of fortune in the kingdom of England brought to the bar of this House, and asked this question: ‘Do you know I. S.,

Esq.? Do you recollect upon any occasion before the election of 1826 seeing that gentleman when he proposed to give you 5000*l.* if you would bring him in for the borough of A.?' 'I do.'—'Did you receive this money?' 'I did.'—'Upon the election before did you receive the same sum from Mrs. B.?' 'I did.' Whereupon a bill is brought in to disfranchise the borough of A. B. C. or D. upon evidence extracted from the mouths of the parties themselves; and all this has been over ten or twelve years. But your Lordships will remember that this case will be quoted as the precedent. And if it be complained of upon any similar occasion in future, it will be in the power of the counsel to say, 'In the case of East Retford your Lordships ordered Mr. Evans, a gentleman of fortune, who had stood for the borough, to produce all his papers, documents, and writings, and compelled him to disclose the secrets which the people of East Retford ten or twelve years before had committed to his charge; he was compelled, at the hazard of commitment, to disclose all these circumstances. And will your Lordships now prevent this investigation from taking place? Will your Lordships now refuse to act up to the precedent then established in 1830? Will your Lordships not call before you all the persons that can give you information upon this subject?' What will be the consequence of all this? My Lords, this will be parliamentary reform in the most oppressive shape.

My Lords, I know very well that these consequences are not such as will operate upon your minds in the investigation of this, which is a judicial question. But it is not immaterial to remind your Lordships, that by these extraordinary powers thus exerted, you have before you all that can in any possible manner be pumped out from the people of East Retford; and that after all, you have not got any proof of bribery; but on the contrary, that bribery is negatived, and that you have got nothing here proved but the payment of money without any previous agreement, direct or indirect.

In the case of Mr. Trotter, in Lord Melville's impeachment, where there was also a bill of indemnity, a question was proposed to Mr. Trotter, the effect of which was to compel him to disgrace himself by the answer. Mr. Trotter refused, and the Commons House of Parliament waived it,—I suppose foreseeing that your Lordships' House would come to the conclusion that he was not bound to make the answer; but in this case it has been ruled otherwise, for the first time. I know that in Grampound, neither my learned friend, Mr. Adam, nor myself, conceived that the bill of indemnity extended further than to protect voluntary witnesses. We never thought that it went to the extent of compelling people, but we thought this: that whereas a person might be very willing to give your Lordships information, and to say, 'I will take upon myself the consequences of the discredit, but I do not choose to allow myself to be punished;' therefore there was a bill of indemnity to protect persons in that situation. And I am confident that in the Grampound case I shall be borne out by my learned friend, Mr. Adam, that there

was no person compelled to give any evidence at all, but the witnesses called were persons who were prepared willingly to state the facts they knew at your Lordships' bar. I see my learned friend confirms my recollection upon that subject; and I am sure your Lordships will pause a long while before you extend the rule in any other case to the extent to which your Lordships have gone here. Undoubtedly, if your Lordships are to compel people to answer bills of discovery in criminal cases upon their oaths, it will follow that no person can be safe under such circumstances. My Lords, the wonder in my mind is, that under such circumstances—under the fear which these persons have been under of your Lordships' awful tribunal, by which they have been compelled to state before your Lordships the receipt of this money, and all the circumstances they have ever heard from any person connected with this borough—the wonder is, I say, that they should not have stated something from which your Lordships would have had reason to say that there was evidence of bribery—that there was evidence of a previous corrupt contract. But nothing of the sort has come out; and I presume only because there really was nothing that could come out. The facts appear to be simply these: there have been sums of money distributed upon three occasions, and upon three occasions only, so far as we can find out, with all this discovery, and with all this calling of hundreds of witnesses before your Lordships' bar. There have been only three elections at which there has been any distribution of money, and every one of these proofs has been accompanied with the fact, that there has been no previous promise upon the occasion. Then, my Lords, there has been no bribery. There has been improper conduct, but there has been no bribery. There has been conduct which the law of the land has never prohibited, although the law of gentlemanly conduct might have prohibited it. Your Lordships are, perhaps, the most fearful tribunal to decide on this subject that could well be selected. Your Lordships, from your habits of life, have connected such a receipt of money with the idea of something corrupt, low, base, and vile. No doubt this is a species of corruption of the lowest description; but I trust your Lordships will look to the law of the land, and say, 'Has the law of the land prohibited it?' and that you will come to the conclusion, 'No, it has not.' Then have these people done that which they knew to be contrary to the law? They have not. They have done that which they believed to be conformable to the law. They have done that which they supposed the law never prohibited. Then, because that is not gentlemanlike conduct, are your Lordships to take from them a right of property, when they have committed no legal offence at all?

But then, supposing this had been bribery, how far has it extended? That brings me to the second question,—the question of majority. I will go over that as shortly as I can, for I know that the more I condense what I have to say, the better chance I shall have of obtaining your Lordships' favourable attention. Upon looking through the lists, your Lordships will find that in the

present borough there are 212 burgesses. In addition to those 212 burgesses who were admitted when this investigation commenced, there are six persons whose inchoate rights have been consummated, and who have been admitted this day. Those inchoate rights have been existing for a long period of time, and they have been consummated for some weeks or months. This happening to be the charter day, they have been admitted to-day, but they have had the right to be admitted for some period of time. Therefore, in truth, there have been 218 burgesses from the commencement of this investigation. There is also another class of persons that ought not to be omitted by your Lordships in the consideration of the present case, and that is the number of apprentices actually serving, whose services commenced before this investigation, whose rights, though not consummated, are in the progress towards consummation, and who will be equally deprived of their franchise by your Lordships taking away the right of voting from the people of East Retford. Your Lordships will find that between 1820 and 1826 there were about sixty-five persons admitted, partly upon birthright, and partly upon service of apprenticeship. You will find that the average number of birthrights is very small, in comparison with the average number of persons who acquired the right by reason of their serving apprenticeships. But even with respect to birthrights, of course a man who is the son of a freeman has an inchoate right at this moment, just the same as an apprentice, and therefore I have a right to take the whole of the average number of persons who in four years are likely to be entitled. In six years you have in evidence that there were sixty-five persons admitted: of that number probably about forty or fifty persons will have inchoate rights, not yet consummated, but whose inchoate rights are to be materially affected by the present Bill, in case your Lordships should pass it. Therefore there are not at present less than 240 or 250 persons materially interested in your Lordships' decision. Of actual voters there were 212 at the commencement of this case.

Now, out of these 212, there are ninety-two persons who have never been accused, or even mentioned in the course of this transaction, whose names not a breath of suspicion has touched. There are ninety-two persons whom my learned friends must admit to be pure, for even Mr. Hornby does not question their purity.—There are also ninety-three persons who have admitted, at your Lordships' bar, the receipt of packets upon several different occasions. Now, I will just beg leave to dissect those ninety-three persons, because your Lordships will find that not to be immaterial when you come to consider one part of this case. There are twenty-four persons who have received packets after the elections of 1812, 1818, and 1820. There are fifty-eight persons in addition, who have received at the elections of 1818 and 1820. There are ten who have received in 1820 only. Then there are, in addition to those, two who received in 1812 and 1818, but who did not receive in 1820; and there are three who received in 1818, and at no other period. Now,

really, I think I ought, in the first instance, to call upon your Lordships, without doubt, to reject the last two classes. There are three of them who have received only once, and that not at either the last election or the last but one. It would be a monstrous proposition to say that a person, under such circumstances, should be counted a corrupt burgess at the present moment. Here is one who never received but once—who has not received upon the last two occasions, and who, therefore, if he ever did receive, must be considered as having long since considered it as an improper act. Then there are two who, though they received upon two occasions, have, in like manner, discontinued doing so at the last two elections: there are, therefore, five who have not for the last two elections received anything. This makes ninety-seven persons altogether. But if we consider this case, upon the principle which, I submit to your Lordships, is the true one, and hold that in order to establish a corrupt act, it must be a corrupt corporate act, it will follow that we ought not to add the corrupt persons of 1812 to the corrupt persons of 1818, and those again to those who are affected in 1820, in order to produce a sufficient number to disfranchise the borough. I know that even if we do that, I am entitled to succeed: but I say that it is putting the case much too strongly against myself; it is also putting the case upon wrong principles if we thus confuse one election with another. Either the election in 1812 was corrupt, or it was not: either the election in 1818 was corrupt, or it was not: either the election in 1820 was corrupt, or it was not. If it was not corrupt, it was pure. There was no corrupt corporate act in 1812—there was no corrupt corporate act in 1818—there was no corrupt corporate act in 1820. Therefore, I say, the question is this: Did the corporation do a corrupt act of bribery in 1812? Did they do it in 1818? Did they do it in 1820? Did they do it in 1826?

LORD CHANCELLOR.—There were ninety-two in 1820.

MR. ALDERSON.—Your Lordship is perfectly right, there were ninety-two in 1820 who received packets. At that time there were 190 burgesses, therefore there was no corrupt corporate act in 1820, because there were ninety-two burgesses who received packets, and there were ninety-eight pure. We now come to 1818. Your Lordships will find in that year there are eighty-eight who received packets. There were at that time 188 burgesses, therefore there were 100 pure.—Then there was no corrupt corporate act in 1818. In 1812 the thing is absurd, because there are only twenty-six persons out of 169.—Therefore there was no corrupt act of the corporation in 1812, there was no corrupt act of the corporation in 1818, nor any corrupt act of the corporation in 1820. Now, if your Lordships are not to keep these things separate, see what gross injustice may be done. Let me suppose there were 450 voters in a borough, and that 150 of them received bribes, and 300 received no bribes, what would your Lordships say of the state of that borough? Is it to be disfranchised, or is it not? There is no corporate act of corruption—there are two-thirds of the borough pure. The proper

way therefore would be to disfranchise the 150 and to leave the borough in the possession of the pure 300. But suppose it should so have happened that out of that number 200 had died; according to the way that we put it, I say you are to look to the state of circumstances at the time the election took place. At that time the borough therefore, as a body, was pure. But according to the contention on the other side, the deaths of the pure 200 would produce an opposite conclusion. Here we are entitled to the benefit of all the pure persons who have died in the intermediate time since each election, and they, on the other hand, are equally entitled to count the number of persons receiving packets, who have died in that time. That is the fair way of putting it. You must look at the period at which the act was done, to understand what the complexion of the act was. If it was pure then, it is pure now. There has nothing happened since except the ordinary circumstances of mortality. Then I say that if your Lordships look at the cases upon the subject, you will find that was the case. We proved a majority in Grampound at the last election. We proved a majority, not of surviving persons, but of actual voters, at the prior election, and of actual voters at the election before that, and therefore we showed that every election, one before the other, was corrupt. Therefore there was a corrupt corporate act upon several different occasions: here there is not any. Therefore I say, first, there is no corruption at all proved, according to my view of the circumstances under which your Lordships have decided similar cases. But I will not stop there, because I say even if you were to take the existing number of persons, and to add all the pure together, and all those who have received packets together, and strike the balance, it will be found to be in our favour.

**LORD CHANCELLOR.**—What is the proportion of deaths of the pure and impure?

**MR. ALDERSON.**—The moment your Lordship gets the number of the persons who are alive of each sort, you will easily ascertain the proportion of those who have died, and your Lordships will find the number has been greater on our side than the other. Indeed it must be so, because if we had the majority on our side, the greater proportion of deaths would, in all human probability, be also out of that greater body. But if I were to put them all together, and take the case as it at present stands—if I were to look at the number of persons who are actually in existence at the present moment, and who have been affected by reasonable evidence—I have a majority. For this purpose I must give to my learned friend the ninety-two who have been proved to have received money at some or all of the three elections of 1812, 1818, and 1820. Then there are other persons who have been impeached by the testimony of Mr. Horuby. There are also certain persons who have been impeached upon questionable evidence extracted from their own mouths. The whole number which my learned friend is in any way entitled to, when added together, makes 104. Still, therefore, the

majority is against him; and whether it be one, or whether it be ten, if our principles are right, cannot make any distinction. It is sufficiently hard that 101 persons being corrupt, and 100 persons being pure, that the 100 pure persons should suffer for the 101 impure. It would be much harder if the 101 should suffer for the 100, and it would be also contrary to your Lordships' decisions. If my learned friend is to get the pound of flesh out of us, he must at least get it without any drop of blood. If he is to succeed by proving that he has got a majority, he must at least prove that, and by clear and distinct evidence, because your Lordships naturally would wish to decide according to the plain equity and justice of the case, that the innocent shall not suffer for the guilty. The majority therefore fails, unless Mr. Hornby is called in to the assistance of the case. Now, my Lords, who is Mr. Hornby? I hardly know whether I ought to waste your Lordships' time in discussing his reputation. My learned friend will not even call witnesses in support of it. We have called witnesses who are unimpeached, notwithstanding the threats of my learned friend. We have called Mr. Smithson, a most respectable solicitor at York, and Mr. Walker and Mr. Richardson, solicitors of unimpeached integrity—men on whom no imputation rests—men who stand in a situation very different from that of Mr. Hornby, and they certainly give a very bad account of him.

My Lords, what does Mr. Hornby say of himself? I think I need not go much further than his own account of himself; he is a young gentleman who has been unfortunate enough to make an old man's will, which old man's will has been set aside, at two successive trials, by special juries of the county of York, under the directions of Mr. Justice Bayley. This gentleman is the attesting witness to a will executed at his own father's house, the devisee having brought the unhappy testator there; and although my learned friend asked Mr. Walker whether Mr. Hornby had any assignable interest for making the will of this old man, he did not ask Mr. Hornby himself whether he had. My Lords, it is no uncharitable thing merely to suppose that an attorney who makes a will for an incompetent person, who is brought by the devisee to a lunatic asylum for the purpose of his executing the will, has some private consideration for so doing, though there may be no proof which the adverse party can bring home to him of any corrupt consideration. Your Lordships know enough of the world to be sure that no such attorney will gratuitously sacrifice his character for ever by making a fraudulent will; but if that were so, it would not make the thing much better. Mr. Hornby would only have the merit of being a disinterested rogue, instead of an interested one—he would still be a rogue—still a person unworthy of being believed upon his oath. He has sworn that the old man, Flint, was capable of executing a will, which, upon the oath of two successive special juries, the man was found not competent to execute. I should like to know what better proof your Lordships can have

than that his evidence there was discredited, even supported by the testimony of the two subscribing witnesses to the will, both of them connected with him, the one the father-in-law of his brother, and a servant in the lunatic asylum. Yet it was discredited. I say, then, what better proof is there that he was not worthy of being credited on his oath, than that four-and-twenty jurymen of the county of York have given their verdict on their solemn oath, that they would not believe him on his oath? That is enough to destroy any man's character for veracity.

But does it rest on the verdict of those four-and-twenty impartial jurymen? What does Mr. Smithson say? Mr. Smithson says that the whole story told of him is a tissue of falsehoods from beginning to end. Then, in addition to the circumstance that he has been contradicted by Mr. Smithson, there is this further circumstance, that he was dismissed from Mr. Smithson's employment because there was misconduct with respect to his accounts. Mr. Smithson tells your Lordships that he dismissed him (Hornby) because he obtained money in a very improper manner. He went, it seems, to a client of Mr. Smithson, received money, and never accounted for it. Now this is the gentleman on whose evidence your Lordships are called upon to disfranchise the Borough of East Retford. Mr. Smithson further states that Hornby obtained money in his (Mr. Smithson's) name, and put it into his own pocket. I do not want to go through all his misconduct; it is a very disagreeable subject to him and to me too, but I must do this in discharge of my duty.

There is another circumstance which still more influences me, my Lords, and which I must bring before your Lordships as utterly discrediting his testimony. Do your Lordships remember the manner in which Mr. Hornby kept back the circumstance of his having been with Mr. Garland? Do your Lordships think that Mr. Hornby forgot that? Do your Lordships believe that it is possible that a man who had gone away from Mr. Smithson in disgrace would forget to whom he had been assigned for the remainder of his time? It appears that he did not remain long with Mr. Garland. How that happened we are not informed; probably he was again dismissed, and then he was bound to his brother. I beg your Lordships' attention to that—to his brother—to serve out the remainder of his time at Scarborough. Is it possible that your Lordships can believe that Mr. Hornby could have forgotten that he entered into the service of Mr. Garland? Or is it not more reasonable to believe that he might suppose that the counsel who was cross-examining him, my learned friend Mr. Adam, who had not been acquainted with his previous history, would not know that he had been in Mr. Garland's service and dismissed from Mr. Garland's service, and probably this would not have been elicited but for accidental circumstances. Your Lordships know it is proved now that both Mr. Smithson and Mr. Garland were present as witnesses at the trial at York. Mr. Hornby's attention was called to these circumstances by the cross-examination. Mr. Garland was pointed out to him;



his attention was called to Mr. Smithson; is it possible that he could have forgotten he was in the service of Mr. Garland? And yet he has sworn that he did. Mr. Garland being dead, we could not call him from the dead to prove the circumstances under which he parted with him; therefore he has that all his own way; but if he has told falsehoods as to the manner of his quitting Mr. Smithson, I put it to your Lordships whether he may not have been guilty of equal falsehood in the circumstance of his leaving Mr. Garland. Where then does he go? Does he go to any respectable, independent solicitor for the purpose of serving out the remainder of his time? No, my Lords, he goes to his brother, who would be sure to receive him whether he was disgraced or not. He must have been exceedingly bad if his brother would not receive him; but he did not serve out the remainder of his time even with his brother. He came to the office of Mr. Galsworthy, in London, who is connected, it seems, with the Insolvent Debtors' Court, for the purpose of serving out the remainder of his time. With respect to the will, my Lord, he states that while he was with his brother at Scarborough, this old man called upon him for the purpose of consulting him. He says he took written instructions, and that, forsooth, he had lost them; a singular thing in the trial of a will cause, that the attorney had lost his written instructions; that is the account he would wish your Lordships to believe of his conduct upon that occasion; and that of a will executed in a lunatic asylum by an old man under circumstances such as those where any attorney would be most careful to shew that he had pursued the written instructions of a client. My Lords, he never did take any written instructions. That was one of the points made in the cause, as was proved at York: he produced a will written without erasure from beginning to end, which must have been prepared, unless he was the most extraordinary draughtsman, with considerable care and difficulty. It was, however, produced, written all fair; and then one point made before the jury, and successfully made, was, that that could not be true,—that it could not be true that he had no written instructions,—but that probably the devisee gave him the written instructions. It is perfectly clear what the conclusion was, that this man was in a conspiracy with the devisee; that he had his written instructions from the devisee, and not the old man. Every man who heard him must have been satisfied that that was the reason he denied at York having any written instructions. This is a circumstance shewing the nature of the man, and therefore the impossibility that your Lordships should believe him upon his oath. Under such circumstances as those stated I am sure you cannot credit his story. But if he had been ever so respectable a man,—if he had been as respectable as he is utterly deficient,—if he had borne as good a character as my learned friend could have wished, he has been contradicted over and over again, and that by testimony such as your Lordships will feel to be of a character very superior to that to which it is opposed.

My Lords, Mr. Hornby has been contradicted by very respectable persons, who have been called to say that the declarations he has stated to have been made in their presence are false. One of these is Alderman Meekly. What evidence is there that the character of Alderman Meekly is subject to objection? He was cross-examined as to a debt of Mr. Cottam's, and about a bankruptcy, and what is the statement Mr. Meekly has given of that? If it is not true, my learned friend could have contradicted him. Alderman Meekly says that he had given to a gentleman of the name of Cottam a warrant of attorney; that he executed that warrant of attorney, and afterwards fell into distressed circumstances. Mr. Cottam then put the warrant of attorney in force against him, and finding that he could not pay, Alderman Meekly did what I take leave to say an honest man ought to have done; and if even Mr. Meekly had procured a commission to be executed against himself, I say the procurement of such a commission, whatever it might be in point of law, would have been in point of honour a very just and proper thing, for it was no more than saying,—‘Here is a creditor who has got possession of property which ought to go among all the creditors. Let the property be distributed among them, and then Mr. Cottam will not get the whole, but every one will get his proportion.’ That is what an honest man ought to do, and what Mr. Meekly has done. No doubt the man who was thus disconcerted would be angry at having lost the remainder of his debt, and very probably he would in consequence refuse to sign his certificate on that ground. Now, if there is anything whatever in the statement of Mr. Meekly which is untrue, my learned friend might have contradicted it by Mr. Cottam, who is here; but he does not. His evidence, therefore, must be taken to be true. Then this fact on which my friend relied, so far from throwing any shade over his testimony, proves him a just and honest man; and your Lordships will not fail to remember this. Mr. Meekly has never received a farthing on any election in the whole course of his life, and yet Mr. Hornby has had the audacity to fix upon him a declaration, as if he was concerned in the corruption of the borough. Mr. Meekly has denied that; his whole conduct refutes it; it is not merely his testimony upon this occasion, but his whole conduct from beginning to end has refuted it. And is it likely that to such a person as Mr. Hornby Mr. Meekly would forfeit the character he had justly and truly acquired?

But it is most important I should now call your Lordships' attention to the evidence of a witness called for my learned friend, a person of the name of John Walker, who stated in the course of his cross-examination to my learned friend, Mr. Adam, that Hornby had concocted the interpretation of the words ‘all is right;’ that that was concocted in Hornby's office. My learned friend, Mr. Law, immediately cross-examined his own witness, John Walker, with considerable vigour, and he brought out that Mr. Meekly was present. If, then, what Walker said was not true, Mr. Meekly could contradict him in what he said. Why did not my learned

friend then call Mr. Meekly? He could have no object, except to have the truth known; he could have no object but to lay that before your Lordships. My learned friend is not counsel as we are for parties, and therefore could not be influenced by the interest of parties. My learned friend is here for the purposes of public justice; he ought therefore to have called Mr. Meekly; he was bound in justice to the public to call Mr. Meekly. He would very well say, 'I care nothing about the result—I am here to examine witnesses, not for a particular side, but for the purpose of establishing the truth. Here is a man who can tell me the truth; here is a person who can either confirm Walker, or can contradict him; here is a person who can either confirm Hornby, or can contradict him, and therefore I will call him.' I say, my learned friend was bound to call him. I cannot suppose there was a desire on the part of my learned friend or any other person, to make a case. I cannot suppose that any one can consider himself as a partisan upon such an occasion as this: but I will suppose that the object is to have the truth, and the truth only; and then, I say, they ought to have called witnesses, and particularly they ought to have called Mr. Meekly. We have not feared, however, to call Mr. Meekly; and Mr. Meekly proves very clearly that the phrase, 'All is right,' was concocted by Mr. Hornby; that he first gave to it an interpretation which has been attempted here; and in truth, this was the circumstance most relied upon before the Committee of the House of Commons, as conclusive of the case there. It was that which produced all this investigation, and now it is clearly and distinctly established that the very circumstance which deceived the House of Commons, and the circumstance which induced them to originate this proceeding, the very circumstance which has caused this extreme length and this extreme delay before your Lordships, was the invention of Mr. Hornby. My Lords, an expression of this sort may be a very innocent jest, or very significant, according to the meaning which a designing person may give to it. 'All is right,' is just the expression for such a man as Mr. Hornby. A clever and shrewd attorney who had nothing to restrain him from doing so, would probably select such a saying to make out the case. Accordingly, we find that Mr. Walker states that Hornby did so. We find that confirmed by Meekly; he boasted to him of this as a very fine transaction, which does more credit, certainly, to his understanding than his honesty; and he endeavours to found upon this the whole case which he attempts to make out against these burgesses. Every one of the witnesses who has been called has been asked whether he ever heard the expression, 'All is right.' I dare say there is no borough in England in which they have not heard that; but they are asked more than that. 'Did you ever hear that spoken in any particular way?'—'No.' 'Did you hear it as meaning anything corrupt?'—'No.' Then Hornby's fraud is contradicted by a host of witnesses, and has nothing to stand upon

except his own testimony—a testimony, in this case, utterly unworthy of credit. Under these circumstances, can your Lordships decide this case upon his evidence? If your Lordships take away his evidence, you have really nothing in the slightest degree affecting the borough as it respects the last election. And even if we could take Hornby's evidence as true, which is a supposition I by no means mean to make,—and if your Lordships by any unhappy misconception should be unable to distinguish right from wrong, and should suppose that Mr. Hornby has erred into truth on any occasion,—what has he proved? He has not proved that more than twenty-six persons have been corrupt, if you believe every word he says. Undoubtedly, Mr. Hornby proves bribery, if you believe him: he proves bribery at the last election, for he proves a demand of money on the part of the voters as the condition on which they were inclined to vote. But I say that is just the sort of evidence one should expect to receive from Mr. Hornby. He knows the materiality of this; he is therefore disposed to give your Lordships that account, and he did not suppose we should contradict him; he did not think we should bring back the witnesses. My learned friend brings up the burgesses; he calls them first, he examines them as to the packets, and then he brings up Mr. Hornby, after the witnesses are all gone home; and then Mr. Hornby is called to speak to declarations made by those same persons at the last election. Mr. Hornby probably did not suppose your Lordships would send for the witnesses a second time; he supposed, probably, that we should not be bold enough to put them into the box again, and that as the witnesses had stated nothing to the contrary, he was at liberty to say what he pleased; but he was deceived. Your Lordships, in justice, permitted us to bring those witnesses back. They have been brought back at a great expense to the country, for the purpose of contradicting Mr. Hornby. The object, if it was intended to prevent our contradicting Mr. Hornby, has not succeeded. He has been contradicted, and I shall dismiss Mr. Hornby, and all his testimony, with the observation, that if your Lordships could believe him, your Lordships would believe anybody.

My Lords, I now come to the evidence of Mr. Ogilvy. I do not mean to say you will not believe him to a certain extent; but he has proved nothing against the Borough of East Retford. His testimony may be explained in the most simple manner possible. What Mr. Ogilvy proves against the Borough is, that he was asked to make a deposit, and that certain shakes and nods were, as he was informed, given to the voters when the canvass took place. As to that, he has been contradicted. There are some very singular circumstances in his testimony which may possibly—though it is difficult to believe it—proceed from mistake or want of recollection. There was among the gentlemen who attended upon his canvass a person of the name of Golland. It is a very singular circumstance that he should not have recollected that person, or not have thought

it material to mention him; but Mr. Golland is not mentioned by him in the whole course of his evidence. Mr. Golland dined with him, supped with him, and canvassed with him, and appears to have been one of his most intimate friends; but Mr. Golland is not mentioned throughout his evidence, and it was perhaps convenient that he should forget him. He might not suppose that we were aware of his existence, or of the facts connected with him. We have, however, called Mr. Golland, and, so far as he is concerned, he has contradicted Mr. Ogilvy. He had much better means of knowing the facts than Mr. Ogilvy, for he was the most active canvasser, and he put down all the names as he proceeded. It is obvious the people were extremely jealous of Mr. Ogilvy's responsibility. Mr. Cottam, it seems, went over to Clumber to visit the Duke of Newcastle with him, and it appears to be a very singular interview. He says, 'I am going over to call on the Duke of Newcastle, to obtain the introduction of the Duke.' The Duke happens to be from home, upon which he says, 'Oh, I am just as well satisfied as if I had seen him. I dare say he was better satisfied; for I conclude the Duke had never seen him in his life, and would not be very likely to patronize him. However, he comes back quite satisfied that he had not seen his Grace. Mr. Cottam, supposing that he was pretending to an acquaintance with the great which he did not really possess, immediately concluded that he was a mere pretender, and not very unlikely to incur expenses without paying them. That was the estimate Mr. Cottam formed of him—whether justly or not, your Lordships will decide.

My Lords, after this Mr. Cottam left him, and Mr. Ogilvy went away. And how did he go away? There were a number of people waiting to be paid. When Mr. Ogilvy came down to East Retford, what could have been more simple or more easy than for Mr. Ogilvy to have deposited at some bank in Retford a sum of money for his current expenses? I have heard of cases in which a person has been obliged to carry down the money in his own carriage because the bankers would not receive his money, and that not a hundred miles from Retford. But I never yet heard of that being the case at Retford. I never heard of Mr. Foljambe having refused to receive a deposit. It would have been easy, I should apprehend, to open an account. I do not suppose, however, that Mr. Ogilvy's carriage would have broken down if he had taken down 70*l.* in bank notes, for the purpose of paying those unfortunate people who seem to have been waiting while he was in the room up-stairs, when he was smuggled away in the coach. Now the main fact stated against the borough by Mr. Ogilvy is that relating to the deposit. It is admitted there was a sum of money demanded of him. The only question is whether that sum of money was demanded of him for one purpose or another. Several witnesses have stated that they asked for a deposit of fifteen hundred or two thousand pounds, for the purpose of guaranteeing the payment of publicans' bills.

Now I by no means think that was an unfit precaution, considering that Mr. Ogilvy was obliged to go away without paying 70*l.* It is clear that it is the interest of Mr. Ogilvy now to save his honour, to insinuate that it was demanded for an illegal purpose, and therefore it would have been wrong to deposit it. 'Touch my honour, touch my life. Why, I have 3000*l.* in my pocket at this moment, but on compulsion I will not produce anything.' 'Why will you not just leave it with A. B. or C. D.?' 'No; who can doubt my honour? I will sooner go away.' In short, it appeared that Mr. Ogilvy, finding he could not get these people to bite without a deposit to secure the publicans, goes away. That is the result of the evidence on both sides. He never comes back again, he never makes his deposit, and never does perform his part of the agreement; and being angry, naturally enough, at being refused, being unwilling to be obliged to admit that he went from Retford, from not being able to make the deposit, he seeks, like other people, to salve it over, by stating that the only reason that he had was, that it might have been deposited for an illegal purpose. My Lords, it is not likely that they should have required it for the purpose stated by Mr. Ogilvy.

There is one circumstance in the evidence which shows what was the practice of the borough. Mr. Evans deposited a sum of money for the same purpose. Was that employed for paying the voters? Certainly not: it was restored to Mr. Evans after the election and before the payment of the voters. Mr. Evans says, and other witnesses say, that that money was deposited because certain persons had improperly come to the borough and had run up bills and left the publicans in the lurch. Mr. Kippax distinctly proves that it was retained for no improper purpose, but was restored, Mr. Evans having, as might be expected, discharged his bills. The money was, long before the payment of the voters, restored to him. If Mr. Ogilvy had deposited his 2000*l.* for the security of the publicans, it was not that the publicans should be paid out of it, but that they might have a security for Mr. Ogilvy paying them, or that they should be paid by the persons in whose hands the money was deposited. This is consistent with all the other evidence which your Lordships have heard. Without imputing to Mr. Ogilvy any wilful act of misstatement, it is the sort of evidence which a person would give after the thing had taken place five or six years ago, just to salve over to others the circumstance of the rejection he had met with in the town of East Retford, there having been a great fear that, like Mr. Maddox, he would go away without paying his bills.

With respect to the other part of Mr. Ogilvy's evidence, he is completely contradicted. He says he heard certain cautions, but no person is named by him. He does not pretend to say that the caution was given to more than one or two persons; and what is stated by Mr. Ogilvy is contradicted by other persons who were

present. I do not wish to impute to him anything further than that he may have misconstrued or misunderstood; but I say it is clear he is incorrect, and that his evidence is not deserving of your Lordships' attention.

With the exception, then, of Mr. Hornby, who, I admit, if his evidence is credited, proves bribery, but who, I submit, is not worthy of belief, there is nothing to touch the last election; and even if your Lordships believed to the fullest extent every fact stated by Mr. Hornby, and every fact stated by Mr. Ogilvy, there is nothing charging more than eighteen or twenty voters of East Retford out of two hundred. That is the only proof of bribery, properly so called: it extends only to eighteen or twenty. I will not undertake to say that I am precisely accurate: it certainly does not extend to more than five or six and twenty.

LORD CHANCELLOR.—I have referred to an abstract I have made, and I think it does not exceed two and twenty.

MR. ALDERSON.—Take it so, my Lords, that it does not exceed twenty-two: then I say, the case totally fails as to the last election. But I submit to your Lordships that you will not consider Mr. Ogilvy as accurate, and that you cannot believe Mr. Hornby at all in any part of his evidence affecting this borough.

My Lords, these are the circumstances under which this case comes before your Lordships. The principles which ought to govern your Lordships' decision are, that there should be bribery—that it should be bribery affecting the majority of the corporate body—that it should have been committed at the last election—and that it should have extended over a long period of time. There is no bribery at all, not even any improper conduct, beginning longer ago than 1812. There is nothing proved after 1820 by any witnesses, with the exception of Mr. Hornby, whose evidence is no proof whatever. There is no evidence that at any individual election the majority were bribed; there is no proof that, of the present freemen of the borough, the majority have received money. There is no proof whatever, therefore, I submit, on the present occasion, justifying the passing of this bill.

LORD CHANCELLOR.—There was a person of the name of Thornton, who died before this inquiry, but there were some documents put in in his handwriting by Mr. Evans. Do you make any observation upon them?

MR. ALDERSON.—No, my Lord; it appears to me they are not evidence upon which your Lordships can rely. They are not evidence on oath. The only reason I have not adverted to those papers is, that I do not consider them to be evidence. And even giving credence to them to the fullest extent, they do not touch the case of bribery at all. This is the account given in by a person of the name of Thornton, whom we have no opportunity of cross-examining respecting a remote period as to which there is no means of obtaining satisfactory evidence, and which is put in under circum-

stances admitting of considerable question. Mr. Evans can give no information about it: it is all out of his knowledge. All he can prove is, that it is in the handwriting of Thornton. It extends only to one election, and that not the last nor the last but one. It is not fortified by any parol evidence whatsoever. It is, indeed, admissible only on the principle, that it is the declaration of a freeman.

LORD CHANCELLOR.—That is the only principle on which it can be admitted, certainly.

MR. ALDERSON.—That is unquestionably the only principle on which its admissibility can be contended for; and it is very hard that anything which any freeman has written on any occasion is to be considered as evidence on which your Lordships are to act. If anybody on a festive occasion cuts a foolish jest about large pockets, the expression of that wish is to be urged before your Lordships as a ground upon which a borough is to be disfranchised. If such declarations of freemen are to be used not only against themselves, but against others, it would be grievous injustice. They may be evidence as against the person himself. By law, your Lordships cannot receive the declaration of A. that B. has committed an offence, until some conspiracy is proved; and there is no conspiracy proved to which Mr. Thornton is a party here. In the case of that which is clearly a conspiracy, it is not till after the conspiracy is established that your Lordships are at liberty to hear evidence of acts of the conspirators as affecting each other; you must first establish the *corpus delicti*. It is not for my learned friend to say it is a conspiracy, and then you must receive evidence. I might equally say it is high treason; I might say it is flat burglary.

I trust, therefore, that your Lordships will think, as I have thought, that this very questionable document is not evidence against any person except the person who has written it. It is evidence against Thornton, but against him alone you are at liberty to receive it. It is not evidence against anybody else, because, though it is in the handwriting of Thornton, it is not on oath or subject to cross-examination.

My Lords, these are the circumstances of this case. I say, my learned friends have most miserably failed in making out any case in support of this Bill to your Lordships' satisfaction. They have not established bribery—they have not shown bribery applicable to the majority of electors at any period—they have not proved it to have existed at the last election—they have not established that it has existed in the borough for any length of time. It began in 1812 according to the evidence; it ceased in 1820 according to the testimony. There is not a single witness to prove its existence since. My learned friends have had the benefit of a bill of indemnity—in violation of all the settled rules of law—to enable them to prove crimes against this borough; but I trust your Lordships will not think it necessary to depart still further from precedent, or from



the course of legal decisions, than your Lordships have done, by founding this Bill on conjecture instead of evidence—on hypothesis instead of fact.

I am much obliged to your Lordships for the patience with which you have heard this case, and my observations upon it ; and I trust that your Lordships are convinced that the case has failed, and that you will, without any further delay, permit us to have recourse to the legitimate mode of returning members to Parliament, which we have exercised for several centuries, and which we trust we shall again be permitted to exercise in the course of a short time.

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